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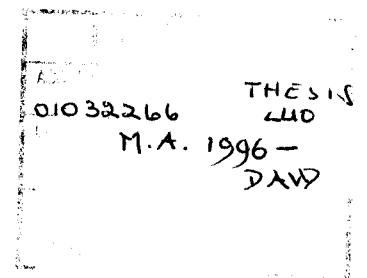
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**Do psychological factors influence magistrates' behaviour
towards mentally disordered defendants? An empirical study.**

Lindsey-Jane Dawson

“Dissertation submitted to the University of Liverpool for the Degree of Master of Arts
(Health and Community Studies) in part fulfilment of the Modular Programme in Health and
Community Studies”



July 1996

Abstract:

The aim of this study was to assess magistrates' knowledge of, and attitudes relating to, mentally disordered defendants / offenders and the effects upon 'disposal' [decision making].

Method: A combined quantitative and qualitative empirical study supported by a literature review was chosen. The research instrument used was a questionnaire distributed to a combined local and national sample of magistrates.

The knowledge, attitudes and decisions of the whole sample were analysed and comparisons made according to gender, professional experience and length of service. No effort was made to control the three 'grouping' variables gender, professional experience and length of service. The possible influence of these three 'grouping' variables were considered and analysed. The significance of the 'grouping' variables upon knowledge and attitude were statistically analysed using the Mann Whitney U-test, Kruskal Wallis Test and chi-square test. Qualitative data was used to support the statistical analysis.

Results: The level of magistrates' knowledge of the procedure for disposal of mentally disordered defendants/offenders was low. Professional experience did not indicate improved knowledge. Magistrates 'knowledge of other agencies' responsibilities and policies with regard to the mentally disordered defendant were demonstrated to be seriously deficient. Magistrates were shown to have negative attitudes towards mental disorder but a more positive attitude towards the history of mental disorder when considering the disposal of defendants/offenders. Female magistrates and longer serving magistrates were significantly inclined to a more positive attitude towards mentally disordered defendants, giving greater weight to the issue of mental disorder. Magistrates showed variable estimates of the importance of mental disorder in criminal behaviour. Magistrates find facilities and options for the handling and 'disposal' of the mentally disordered in the Magistrates' Court extremely deficient, limited and frustrating.

Conclusion: The research has shown that there is in general, poor knowledge and understanding of the main issues associated with mentally disordered defendants/offenders. The study has also demonstrated that these deficiencies adversely affect magistrates' decision making 'disposal', in respect of mentally disordered defendants/offenders. The study has shown that in order to reduce the number of mentally disordered remanded to prison and thus adhere to policy outlined in Home Office circulars 66/90 and 12/95, it is necessary to take steps to improve the knowledge and understanding of the issues related to the mentally disordered defendant/mentally disordered offender for all magistrates.

Declaration:

‘The work is original and has not been submitted previously in support of any qualification or course’

Signed:

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TERMINOLOGY

Across the academic disciplines there is little agreement upon the choice and use of terminology/labels. Throughout this research I have chosen to use the term **mental disorder** in preference to mental illness (Gunn and Taylor 1993) thus avoiding any firm alliance with a purely psychiatric medical model. This wider definition encompasses the full range of degree of mental disorder and is not confined to those who fall within the 1983 Mental Health Act. The **mentally disordered offender** is an all embracing, collective term used by most academic disciplines to describe a person who has a mental disorder and comes into **contact** with the criminal justice system. The term **offender** is used to cover alleged offenders as well as people convicted by the courts. It is used in a pejorative way and does not truly reflect the variety of circumstances that a mentally disordered person may find themselves involved with the criminal justice system, which is first and foremost as a 'defendant' and therefore 'innocent until proven guilty'. Where applicable I have endeavoured to use either the **mentally disordered defendant, abbreviation - MDD** or **offender, abbreviation - MDO**, except where direct reference has been made to a publication which has expressly used a different term.

List of abbreviations and terms

MDD	Mentally Disordered Defendant
MDO	Mentally Disordered Offender
NACRO	National Association for the Care and Resettlement of Offenders
Local	3 North West Benches Sample
Madingley	National Sample
B.P.A.G.	Best Practice Advisory Group
disposal	decision making
custodial remands	imprisonment
PAMDOS	Positive Attitudes to Mentally Disordered Offenders Scale
KCPS	Knowledge of Court Procedure Scale

Chapter 1 Introduction and Literature Review

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CHAPTER 1 Introduction

1. INTRODUCTION

1.i Aim

The aim of this study is to assess magistrates knowledge and attitudes relating to mentally disordered defendants/offenders and the possible effects of these upon 'disposal' (decision making).

1.ii Rationale

This research was initiated as a response to government concerns outlined in Home Office Circulars 66/90 (1990) and 12/95 (1995) and those expressed in the Reed Report (1992), relating to the numbers of mentally disordered who are inappropriately placed in custody.

The primary responsibility for inappropriate custodial remands and sentencing ['disposals'], of those who are mentally disordered, lies within the jurisdiction of magistrates and magistrates' courts. It is, therefore, reasonable to suggest that an evaluation of magistrates' knowledge of and attitudes towards the issues that surround a MDD, and the influence upon these of gender, professional experience and length of service would give considerable insight into the influences upon 'disposal'. At the outset a notional model of possible associations between individual factors, attitudes, knowledge and 'disposal' was created [see page 5].

The identification of influences upon 'disposals' would be a first step towards developing the skills and knowledge within the magistracy to use more appropriate 'disposals' for MDD/MDOs. A comprehensive literature search has failed to identify any similar study of magistrates' attitudes and knowledge, in relation to the MDD/MDOs and the possible influence these may have upon 'disposal'.

1.iii **Epidemiology of crime and mental disorder**

There is very little reliable quantitative data with regard to the numbers of MDDs who appear before the courts. However, if you contrast the figure for the number of defendants which passed through the magistrates’ court in 1994 - 1,947,000 (Home Office, criminal statistics, 1994), with the Department of Health’s estimation of those who suffer from a mental disorder within our society, a conservative 2 - 6 million adults [4-13%] (NACRO,1994); it becomes reasonable to suggest that one might expect to find a corresponding percentage [4-13%]of defendants who pass through the magistrates’ courts to be mentally disordered. An indication of the merit of this assumption can be found in the fact that magistrates pass the bulk of the hospital orders made each year [no figures given] (Gunn and Taylor,1993). Further evidence to support this may be found in the studies undertaken by Gunn (1990),Prins (1991) and Grounds (1992) which suggest, that as many as a third of the prison population require some kind of psychiatric intervention, with the numbers significantly increasing in remand prisons. However, the significance of these findings must be balanced with the awareness that imprisonment itself can evoke and aggravate mental disorder. Therefore, it should not be assumed to have been in existence prior to imprisonment or related to the criminal act.

Despite numerous requests to both C3 Division Home Office, Statistical Division and The Lord Chancellors Department, the only accessible figures are those which appear in the Best Practice Advisory Group for the year 1989,in England and Wales:

Remands to a mental hospital	=	328
Number of psychiatric reports carried out by prison medical officers following remand in custody	=	5,569
Number of probation orders with:		
i) condition of non-psychiatric treatment	=	870
ii) condition of residential psychiatric treatment	=	120

1.iv Magistrates and the Magistrates Court

There are approximately 25,000 serving magistrates in England and Wales. Magistrates [Justice of the Peace] are selected from their local community, from as diverse a range of interests and experience as possible, thus ensuring that each local bench is truly representative of the community which it serves. Therefore, they can be considered a heterogeneous group in knowledge and attitudes but with a common thread - they are magistrates.

Magistrates' decisions must be reached within the framework of the law, and based on the evidence brought to his/her notice in the manner prescribed by law. However, the responsibility is incumbent upon magistrates, to ensure that those defendants suffering from a mental disorder are not imprisoned unnecessarily. In order that this may be achieved, it is necessary for magistrates to be aware of their powers and options in relation to the MDD/MDO and to understand the roles and responsibilities of the various agencies who deal with MDDs and MDOs. In an attempt to address some of these issues The Magistrates' Association published (May 1996) an article in which they briefly describe the 'Best Practice' for magistrates on How to Deal with Mentally Disordered Defendants (see page 4).

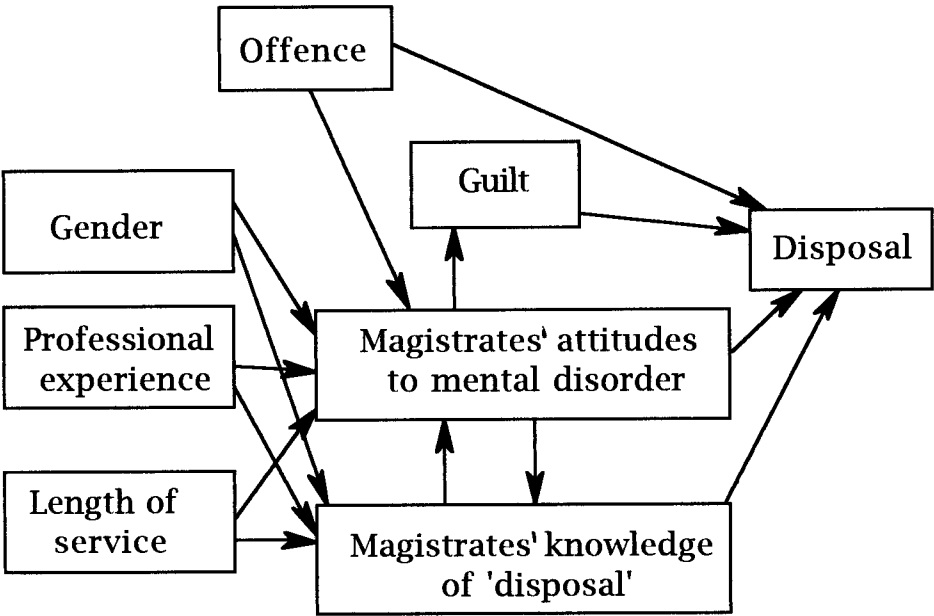
1.v Summary of 'Best Practice' for magistrates on How to Deal with Mentally Disordered Defendants

The following extract outlines briefly, the recommended 'best practice' published by the Magistrates Association, which all magistrates should be aware of and refer to when faced with a mentally disordered defendant.

The government attaches importance to ensuring that those suffering from mental disorder are not imprisoned unnecessarily. If medical reports are required before sentence, arrangements can be made for this either on bail, from an assessment scheme or through remand to hospital. If treatment is thought to be desirable after conviction this can be provided in the community; or if the offence is serious enough, treatment in hospital as an in - patient is available both as part of a probation order and under the provision of hospital orders.

[by Ann Flintham in The Magistrate, May 1996. page 97]

1.iv A model of possible associations between individual factors; attitude, knowledge and disposal of MDD/MDOs.



Individual factors

Attitude/Knowledge factors

1.1 Literature Review

There is currently multidisciplinary concern, as will be demonstrated by the following literature review, as to the number of mentally disordered persons receiving inappropriate disposals such as custodial remands and sentences by the courts, i.e. by magistrates. The evidence for this is to be found in a variety of policy documents and empirical research, for example: Jones,1990; Browne,1990; Grounds,1991; Reed,1992; Home Office,1995. It is therefore important to establish that the disposal of MDDs/MDOs by magistrates is not built upon false assumptions and stereotyping. The basis for this study was to investigate magistrates level of knowledge, understanding and attitudes of mental disorder and MDDs; and what influence, these may bring to bear, upon magistrates disposal of cases involving MDDs.

There are few if any studies which have examined magistrates as a cohort. Therefore, in order to establish a theoretical base from which to consider attitudes of magistrates ,the literature review has encompassed those studies which report both professional and lay opinions of : mental disorder, the association of mental disorder and crime; mental disorder, crime and violence, and the possible influence of independent variables such as gender, professional experience or length of service. By outlining these debates in some detail I will demonstrate the potential difficulties which magistrates face when imposing a disposal involving MDDs/MDOs.

Most publications relevant to this empirical study date from 1970 and this literature review has concentrated upon those. The diversity of disciplines, their research and the fact that their findings have been presented in such a wide range of publications, made it necessary to collate articles and reports covering psychology, psychiatry, forensic psychiatry, the health services, law, the criminal justice system and government policy documents.

The following literature review is divided into four sections:

- 1.2** The development of Magistrates Court Diversion Schemes
- 1.3** Recent history of government policy in relation to MDDs/MDOs.
- 1.4** Mental disorder and crime
- 1.5** Attitudes - to Mental Disorder

1.2 The development of Magistrates Court Diversion Schemes

Court Diversion schemes are initiatives by which a MDD/MDO can be diverted from the criminal justice system and referred to the health services for psychological and psychiatric treatment, and can result in a prosecution being withdrawn.

There is very little reliable quantitative data relating to the numbers of MDDs who appear in individual magistrates courts. This has fostered the belief, among magistrates, that the incidents of defendants suffering mental disorder are so few that they disassociate themselves from the true national picture (Sandell,1994). Disassociation, in combination with poor dissemination of information of procedures and policies relating to MDDs/MDOS, may lead to magistrates not always being fully informed when making their disposals. The consequence is that some MDDs receive unnecessary custodial remands (imprisonment) whilst awaiting trial or to facilitate the preparation of psychiatric reports.

Over the last twenty five years, it has become increasingly obvious that a multi-disciplinary investigation into the issues and problems surrounding the MDDs is essential (Reed Report,1992; Newman,1994; Health of the Nation,1992). In 1975 the Butler Committee (Home Office 1975.Cmnd.5698) emphasised that MDDs/MDOs ought not to be remanded in custody. Recommendations were made but the objective to minimise the number of people with mental disorder being placed on remand [no figures available] has yet to be significantly realised (Gunn,1991; Prins,1994a). Further affirmation that MDOs should be diverted from custody and the criminal justice system, to receive appropriate psychiatric care was expressed in the Woolf Inquiry Report (Home Office 1991.Cmn.1456).

One of the first references to magistrates and MDD/MDOs was in 1981 with an edict from the Magistrates Association (1981) to its members reminding magistrates that remands in custody for psychiatric reports should be avoided wherever possible. The same year saw the Home Office Research Unit report that magistrates felt that a considerable number of defendants

charged with petty offences were mentally disordered. The magistrates interviewed went further by suggesting they also required compulsory treatment, and that it was their consideration that custodial remands/sentences were a legitimate means by which a mentally disordered person “could be removed from society and treatment would be made available” (Home Office,1981).

An illustration of the incongruity that has continued to exist among magistrates, as to recognising the issues surrounding MDDs or the evaluation of size of the problem, can be seen in a subsequent statement from the Magistrates Association in 1987:

*‘the comparative **rarity** of the problem means that few magistrates develop any practical experience of identifying possible disposals’*

(Magistrates Association 1987)

Such claims by some magistrates in some areas, that the numbers of MDOs appearing in their courts are very few and not great enough to sustain the investment of a diversion scheme, have continued to be reported (Sandell, 1994;Allum,1995). This view is challenged by Allum (1995), who suggests that where diversion schemes have been successfully introduced the number of MDD/MDOs appearing before magistrates has increased. However Allum does not provide any statistical evidence to support such a claim.

A rare insight into five magistrates individual perspectives on MDDs is to be found in the documented account of the discussions undertaken during the preparation of the report “Black People, Mental Health and the Courts” (1990). This was jointly sponsored by the Afro-Caribbean Mental Health Association, The Commission for Racial Equality and NACRO and looked at the psychiatric remand process and its impact on black people appearing before the courts. The results indicated a high level of custodial remands/sentences and the compulsory detention of black offenders under mental health legislation (Browne,1990). The documented discussions with magistrates are most revealing. Four out of the five magistrates reported, between 1985 - 1989, a steady increase of disturbed offenders coming before them,

contradicting the statement by the Magistrates Association in 1987 (see page 9). They clearly associated this increase with the government initiative - 'Care in the Community' and the push to close the large mental hospitals and the 'release' of significant numbers of mentally ill people into the community (Browne,1990).

However it is not clear in the report whether the questions were asked and answered with a constant consideration to ethnicity, or whether the magistrates' responses should be considered as generalisations, applying to all who appear in their courts regardless of their ethnicity. The report's conclusion from the magistrates' interviews were :

“that although the psychiatric process at magistrates' courts may not intentionally be used negatively, there are certain factors which mean that this is often the only way that it can be used. And coupled with magistrates' lack of experience and unfamiliarity with the provisions of the 1983 Mental Health Act and the unavoidably subjective nature of decisions they are expected to make. This would suggest that decisions are not always made in the best medical interest of mentally disturbed defendants generally and Black defendants in particular”

(Browne,1990).

There was a steady increase in concern, from 1985 onwards, about the way mentally disordered persons were handled and dealt with by the criminal justice system throughout England and Wales (Browne,1990;NACRO,1994).

Concerns relating specifically to magistrates courts were:

- i) an apparent increase in the number of MDDs appearing in the magistrates' courts
- ii) lack of availability of bail hostel or psychiatric hospital accommodation
- iii) difficulties and delays in obtaining psychiatric reports
- iv) inappropriate use of custodial remands or sentences for defendants with mental disorders.

As a result of the aforementioned concerns and their reiteration in much of the Government sponsored literature at the time, diversion schemes to divert MDDs away from the criminal justice system and towards health care, were derived (NACRO,1994; BPAG,1992(a); Joseph,1992; Blumenthal & Wessley,1992). Information regarding 'diversion' schemes was not made generally available until 1992, with the publication of a bulletin from the Best Practice Advisory Group (BPAG,1992), chaired by the Home Office Advisor on Magistrates' Courts. Its stated purpose :

“to heighten awareness of the problem of mentally disordered offenders and to encourage courts with the aid of suggestions of the best practice, to initiate action where possible”.

This bulletin provided practical guidance on setting up 'diversion' schemes, and evaluations of a number of existing schemes and initiatives, e.g. **Inter-agency approach**, North West Hertfordshire Assessment Panel Scheme,1985, (Tonak,1992) and a **Duty Psychiatrist Scheme**, Peterborough Magistrates' Court,1986, (BPAG-Annex B.A ,1992). In line with previous reports it places emphasis upon the following :

- Alternative measures should be considered to avoid remands to prison a mentally disordered person has a right to be considered for bail
- Courts should be aware of existing powers to deal with mentally disordered offenders
- The policy outlined in the Home Office circular 66/90 should be constantly in the minds of all courts when dealing with such offenders.
- All courts should consider initiating an appropriate scheme for dealing with the mentally disordered

The most significant finding was the development of training programmes for magistrates which were reported to be having an immediate effect. This effect of an apparent increase in referrals to other agencies was interpreted as a result of magistrates feeling better informed about mental health legislation (Thatcher,1992), which in turn led them to make more appropriate disposal of cases (Joseph,1992). However, no evidence was documented at the time to support these conclusions.

A number of studies reinforced the value of diversion (Jones,1990) by way of focusing and analysing the efficacy of diversion schemes, and reporting on their effectiveness in preventing re-offending (Cooke,1991; James & Hamilton,1991; Blumenthal & Wessely,1992; Joseph & Potter,1993a,1993b). James & Hamilton (1991) study reports a fourfold increase in the number of hospital orders made by magistrates following the introduction of a liaison scheme, and a significant reduction in length of time MDOs spent in custody. Neither James & Hamilton (1991) or Joseph & Potters (1993a) corresponding study examine in any detail the magistrates role and influence upon the reported study and outcomes, only referring to magistrates as “responding in a flexible and pragmatic way” (Joseph and Potter,1993a).

In contrast, to the studies by James & Hamilton (1991) and Joseph & Potter (1993a), Blumenthal and Wesselys' (1992) comprehensive appraisal of diversion schemes considered the role of the magistrate, emphasising need for inter-agency collaboration. They concluded that arrangements in many areas were inadequate, with large numbers of appropriate candidates for 'diversion', not being diverted into the mental health services. Holloway and Shaws (1992) findings endorsed those of Blumenthal and Wessely (1992), and those of an earlier study by Dell et al (1991). Dell et al (1991) study looked at mentally disordered remand prisoners, examined the process and outcome of psychiatric assessments in custody, referrals to outside psychiatric services and the decisions made by courts. The majority of the cases in the core samples had been referred by the courts for reports. Significantly the study reveals that over four-fifths had been initially remanded in custody by a magistrates' court, and of those remanded by magistrates for medical reports, approximately half were pre-trial and half were

post conviction. Only a small proportion of the individuals studied had been charged with grave offences of violence and most offences were relatively minor, for example: public nuisance offences, criminal damage, threatening behaviour, or vagrancy. People, however, with a diagnosis of psychosis were particularly likely to have been charged with criminal damage and other 'public order' types of offences. These findings are important evidence of the need for diversion from the criminal justice system for MDDs and are clearly supported by the findings of subsequent studies (see page 22-24).

The most significant finding of the report was:

“ that remands in custody of the mentally disordered were not made because of the nature of their offences but because of their need for social and psychiatric help and that the remand prisons were being used primarily for the purpose of psychiatric assessment in these cases. ”

and the report concludes

“the research indicated that remands in custody are an inefficient, ineffective and inhumane way of securing psychiatric assessment and treatment”.

(Dell et al, 1991)

In contrast, Sandells (1994) evaluation of three pilot diversion projects identified their most significant achievement being to raise the profile of MDD/MDOs, and show that improved inter-agency co-operation can lead to improved disposal by magistrates and diversion in appropriate cases.

Further endorsement of the merits of 'diversionary' schemes as a means of substantially reducing the number of people inappropriately detained in prison for psychiatric assessment/reports comes in a study by Robertson et al (1994). The findings make a case for significantly strengthening the 'diversion' process , especially in the cities, by the development of units to which acutely disordered defendants may be referred by the courts e.g. magistrates [with the assistance of a court based psychiatrist]. Further expressions of concern, as to the

numbers of mentally disordered people in our prisons, are outlined by Prins (1994a). He considers the reasons why still too many mentally disturbed individuals are in prison. One such consideration is the number of custodial disposals of MDDs/MDOs made by magistrates for a variety of reasons, for example: no alternative available, bail hostels full or refusal to accept MDDs, psychiatric reports, or access to mental health services. However, he argues that whilst the aforementioned reasons are significant a further dimension must be considered. Prins (1994a) proposes that there is a direct link to the closure of the old mental hospitals, and the current move towards - 'care in the community' - without the establishment of sufficient alternative provision in the community has resulted in more mentally disordered coming before the bench. He extends his concern elsewhere (Prins, 1994b), when he warns against the idea that 'diversion' is the panacea for the MDOs and draws attention to its possible limitations, not least because of the under funding and under resourced state. Campbell and Hegenbotham (1991) challenge the principles of 'diversion', on different grounds. They question whether mental illness is a good reason for differential treatment and argue that mental illness may be relevant in one situation but not automatically relevant in another, and go on to suggest that excusing offending may not always be in the defendant's interest.

This diversity of opinions among the professionals emphasises the difficulties and dilemmas faced by the lay magistracy when faced with MDD/MDOs. It in turn underlines the need for magistrates to be as well informed as possible as to the processes and policies relating to the issues surrounding the MDD/MDOs .

1.3 Recent history of government policy in relation to MDDs/MDOs.

Government policy concentrates upon two main concerns which appear to be at the heart of the issues surrounding MDD/MDOs. These are keeping the mentally disordered out of prison and to receive appropriate care, and the development of appropriate training for all agencies who have contact with MDD/MDOs. Such policy statements are to be found in Home Office circular 66/90 'Provision for Mentally Disordered Offenders' and reinforced by the Reed

Report (1992). Home Office circular 66/90 was distributed to all courts and agencies responsible for dealing with MDD/MDOs and included an endorsement of the development of 'local' diversion initiatives, training and gave **specific guidance as to the powers and courses of action which magistrates** may wish to consider when faced with cases involving mentally disordered persons for example:

- i) that mentally disordered persons have the same rights as other persons, including a right to bail
- ii) and should never be remanded to prison simply to receive medical treatment or assessment
- iii) it is good practice for the court to receive professional advice at as early a stage as possible and be made aware of facilities which may be available to assist it with mentally disordered persons
- iv) where prosecution is necessary it is important to find a suitable non-penal disposal.

A major Government review of Mental Health Services, spearheaded jointly by the Home Office and the Department of Health, culminated in the publication in 1992 of the extensive 'Reed Committee Report' (Cmnd.2088). The report echoed many of the findings from earlier research (Dell et al,1991) for example: Court based assessment and diversion should be adopted by all magistrates courts and become an integral part of the criminal justice system, as is the case in the United States of America (Allum,1995). It also endorsed all the policies outlined in Home Office circular 66/90 whilst placing great emphasis upon MDDs/MDOs needing care and treatment from Health and Social Services rather than in custodial care, and that mentally disordered patients should not be disadvantaged by their status as offenders.

Government policy on the MDD/MDO was also emphasised within other documents such as the White Paper 'The Health of the Nation' which suggests that :

“Mentally disordered people who commit offences are a particularly vulnerable group. There is a risk that if their health and social care needs are not met they may slip into a vicious circle of imprisonment, reoffending and deteriorating mental health.”

In direct response to the 'Reed Report' and the BPAG Bulletin, the Home Office commissioned the Mental Health Foundation to organise a series of conferences, to promote regional strategies for MDOs. Their findings were published in the 'Report of the Mental Health Foundation's Regional Conferences on Improving Services for Mentally Disordered Offenders' (Newman, 1994). Eight of the Conference's recommendations have implications for the magistrates' courts. They broadly emphasised and expanded upon the recommendations of the Reed Report and BPAG, but specifically focused on the need for training of magistrates' improved inter-agency collaboration and communications .

The Home Office and NACRO's Mental Health Advisory Committee [1992], whose remit was to consider all aspects of the problems which MDDs/MDOs present to the criminal justice system, published a series of four policy papers. But it is Policy Paper 2 - Diverting Mentally Disordered Offender from Prosecution (NACRO, 1993) and Policy Paper 3 - Diverting Mentally Disordered Offenders from Custodial Remands and Sentence (NACRO, 1993) which contain specific implications and interest for the magistracy. Both emphasise the need for the development and improvement of training, inter-agency co-operation (NACRO[2], 1993), which in turn they suggest would lead to an improvement in the quality of advice contained in pre-sentence reports, allowing magistrates to be better placed to choose the appropriate sentencing option. Policy paper 3 carefully examines how MDOs can be diverted from custodial remands and sentences at the court stage of the criminal justice system (NACRO[3], 1994). Thus reinforcing the principles and recommendations referred to in Home Office circular 66/90. Whilst these policy papers acknowledge that some progress has been made towards avoiding the use of custodial remands and sentences for the MDD/MDO, it is

not readily apparent from precisely where they draw this conclusion.

In 1995 a joint 'Home Office and the Department of Health Mentally Disordered Offenders, Inter-Agency Working Document' (1995) focused on the role of magistrates and their dealings with MDDs/MDOs. It outlined the procedures which the Home Office regard as good practice and a summary of this document was circulated[Home Office circ. 12/95] , under the heading "When to Charge and Prosecute". Emphasis was placed upon

'the needs of the defendant being balanced against the needs of society'

and that

'Inter-agency arrangements should therefore aim to ensure that where offences have allegedly been committed by mentally disordered people, the question of public safety and any relevant information about the person's history are taken fully into account in deciding whether to charge; and that where criminal proceedings are instituted , the treatment and care needs of individuals are properly met'.

The training of magistrates is only briefly alluded to throughout these documents. By implication therefore, it appears to be that the responsibility of training rests with multi-agency local training initiatives, in conjunction with magistrates' court committees and the court user groups.

Although, there is widespread multi-disciplinary support for the diversion initiative, there are those such as Prins (1994b) who feel there are still areas which require closer examination, in order to maximise the effect of diversion initiatives. Such an area is the association of mental disorder and crime, and whether certain patterns of behaviour are related to the mentally disordered (Hillis, 1993).

1.4 Mental Disorder and Crime

In this section, the evidence for a link between crime and mental disorder will be examined by reviewing the relevant literature.

It can be seen from the literature review so far that the magistrates role of setting appropriate disposals for MDDs plays a crucial part in the overall aim of reducing the numbers of mentally disordered people in custody. Therefore, it is important to establish that the disposal of MDDs by magistrates is not built upon false assumptions and stereotyping. By outlining the debate in some depth I hope that it will show the potential difficulties which magistrates face when imposing a disposal involving MDDs/MDOS. In an attempt to quantify the occurrence of crime and mental disorder Monahan and Steadman (1983) undertook a comprehensive numerical review of the relationship between violence, crime and mental disorder. In their analysis of the various studies they reviewed, they failed to demonstrate a clear relationship between crime and mental disorder but did show a significant association between schizophrenia with violent behaviour. The difficulties with this study appear to be the categorisations used in the studies reviewed, the majority focusing upon treated patients and treated criminals (Monahan and Steadman,1983). There is a disagreement amongst researchers, such as Monahan (1992) and Hodgins (1993), whose studies found a modest association between major mental disorder and violence, and the findings of Link and Steueve (1994) whose data indicated that new , ongoing and former patients had substantially higher rates of violence than never treated community members.

The bulk of research on mental disorder and violence concerns official statistics of crime and diagnosis rather than community-surveyed mental disorder (Feldman,1993). There is some evidence (Lindquist and Allebeck,1990) that violence is more common in some untreated mental disorders such as schizophrenia. However, many feel that the association with violence depends on the population under study and within the context of the situation in which it occurs (Higgins,1995). For example Barker et al (1995) draws attention away from the 5% of violent, sexual and drug offences that psychiatrists are more likely to deal with and focuses our

attention on the remaining 95% of criminal activity and suggests that a possible 1-2% of those individuals who offend (e.g. theft), are doing so in association with , or as a result of a range of psychiatric disorders. Therefore it could be inferred that out of every 2 million cases of theft in 1988, in England and Wales, 20,000 cases had a psychiatric aspect to them (Mayhew et al,1989). This is particularly relevant consideration for magistrates when they are determining guilt and sentencing [disposal].

What does become clear throughout the literature review is the general recognition of the recurring and aggravating effect that alcohol and drug abuse has on the mentally disordered and their offending behaviour.

There have been a number of publications which discuss and focus on an individuals ability or inability (offender) to 'control' their behaviour (Hollin,1994; Eysenck,1984). A selection of studies which were looked at by Kurochy & Sayer (1980) showed that offenders tend to explain their behaviour as being controlled by influences beyond their personal control, and therefore external to them.

There are many divergent theories attempting to explain an association between personality and offending. One of the best known theories was proposed by Eysenck (1977) who viewed offending as 'essentially rational behaviour' and assumed that

“a person's criminal tendency varied inversely with the strength of his conscience. The conscience being a conditioned anxiety response that was built up in a social learning process”.

Likewise Farrington (1993) suggests that

“criminal behaviour results from the interaction between a person (with a certain degree of criminal potential or antisocial tendency) and the environment. Some people will be more likely to commit offences than others and, conversely, the same persons will be more likely to commit offences in some environments than others”. (page 253)

Farrington focuses on the offender rather than the offence and examines the most important

predictors and correlates of offending. Curiously, mental disorder is not included and therefore it could be assumed that Farrington does not consider mental disorder a predictor of offending. However, he does examine and conclude that low intelligence is linked to offending. His evidence for this is based on intelligence tests, whilst his conclusion appears to be based solely upon the reasoning, that because they are of low intelligence they are unable to foresee the consequences of their offending and are more likely to be caught.

If there is disagreement within the medical and psychological disciplines as to the inclusion of personality disorder within the encompassing title of mental disorder, there is certainly confusion among lay people and therefore by implication among magistrates. Such resistance to accept personality disorders as candidates for health care rather than legal punishment comes from within psychiatry itself who on the whole consider personality disorder as untreatable (Blackburn,1993). The debate is fully discussed by Gunn and Taylor (1995) where nosological and descriptive aspects of personality disorders are considered. While Wolman (1987), discusses the conceptual understanding of personality and disorders, they both emphasise the difficulties of attempting to treat such individuals and suggest that personality disorders (socio-pathic behaviour) are more a socio-cultural problem than a clinical problem. It is suggested that the cause is to be found in society and cultures and not within the physical framework of the individual (Freemans,1993). While this debate continues within psychology there is a divergence of opinion about the role of mental events in determining behaviour (Davies and Houghton (1991) and the relationship between mental disorder and crime. For example Bandura (1977) subscribes to the hypothesis that the occurrence of aggression depends both on conditioned responses and on cognitive elements based on modelling and experience.

Prins (1995) and others have argued that the mentally disordered should be considered as a 'special group' by the criminal justice system. Others (e.g. Smith & Donovan,1990) have argued that there are disadvantages to diversion and non-prosecution, and that a diagnosis of mental disorder does not totally erase culpability:

“Excusing offending may not always be in the patients interests.” page 380

“non-prosecution can re-inforce the patients belief that he or she need not control his or her behaviour”

(Smith and Donovan, 1990) page 381

In contrast Feldman (1977) argues that the fact of a greater percentage of mental disorder in offender populations than in the rest of the population, **does not** establish a causal link between the disorder and the criminal act. However Hollins (1989) steers a middle course through the debate and suggests that the true relationship between mental disorder and crime is merely one where the two phenomena co-exist and that each case should be considered on its individual merits, to determine in that particular instance, the nature of the relationship between the disorder and the crime (Hollins, 1989).

Faulks (1994) approaches the debate from the position that mentally disordered individuals possess and are capable of the full range of emotions, reactions and uses this recognition as an explanation as to how mental disorder **may** lead to crime

‘The normal human motives for property offences (greed, envy, anger, jealousy, resentment and so forth) occur also as motives in the mentally disordered. The presence of a mental disorder does not preclude the patient from experiencing such feelings. The disorder, by intensifying emotional reactions or distorting perception, may engender similar feelings which precipitate an offence’ (page 83)

A different approach is taken by Cordess (1995) who starts by looking at the type of crime, and then examines the way a psychiatric disorder in the offender may be relevant to the criminal act. He shows that psychiatric disorder is rarely associated with the 94% of offences which are non violent, with the notable exception of shoplifting. In 1981 Gibbens showed that at least 5% of shoplifting was associated with an underlying mental disorder (Gibbens, 1981). This view is strengthened by Gudjonsson (1990) who suggests that a presentation with mixed clinical features is **commonly** found in the psychologically disturbed female shoplifter.

Dietz's (1992) hypothesis that the relationship between mental disorder and crime is not so variable as to be unique to each case supports Gudjonsson's (1990) study. Dietz offers a conceptual framework to understand MDOs by describing five patterns:

Pattern 1: Crime in response to psychotic symptoms.

Pattern 2: Crime to gratify compulsive desires

Pattern 3: Crime reflecting personality disorder

Pattern 4: Coincidental crime and mental disorder

Pattern 5: True or feigned mental disorder in response to crime

which he suggests are frequently observed among MDOs. Dietz concludes that these do not comprise a typology but could be used to direct the evaluator's, i.e. magistrates, attention to basic issues of cause and effect. However, Prins (1994b) subscribes to the argument that the relationship between criminality and mental disturbance is a much more complex matter, which involves social and environmental factors, as well as the manifestation of inner processes and that some mental disorder such as depression often goes unrecognised.

The hypothesis, that there exists unrecognised mental disorder, was tested by Brabbins and Travers (1994) whose study attempted to evaluate the amount of mental disorder which existing schemes (e.g. diversion) were failing to identify. They specifically examined the demographic details and the amount of mental disorder, amongst defendants appearing in Liverpool Magistrates' Court, over a one week period. Surprisingly the researchers, using a semistructured interview with a proforma, designed to collect demographic data of a sample size 136 MDDs, found very little mental illness. Only four subjects were reported as having treatable clear-cut mental illness [84 (63.3%) no diagnosis], which is in direct contrast to the findings of those studies which focused on large city magistrates' courts (see page 13). None required voluntary or compulsory admission; two out of the four subjects, identified with treatable mental illness, were already known to the psychiatric services. It may be possible to attribute such findings to three significant factors: a) the short length of time of the study;

b) what definitions and criteria were used by the psychiatrists in determining mental illness; c) whether only those people requiring acute hospital admission were considered. These are not made clear in the article. However, high levels of drug and alcohol abuse were clearly a problem. Brabbins and Travers findings differ considerably from that of the London Diversion scheme, the first to be assessed in the UK (Joseph and Potter,1993a), who reported significant numbers of MDDs [402 over 18 month period, a mean of 11.4 per month, range 5-22].

In order to move from the 'theory' of an association between mental disorder and crime, several studies were undertaken to estimate the prevalence of mental disorder in prison populations. An examination of a sample of a remand prisons population [defendants awaiting trial or sentence] by Gunn et al (1991) estimated that more than one in three adult prisoners were mentally disturbed. Over 3% of prisoners were so seriously mentally ill as to require urgent hospital treatment. Whilst these findings were confirmed by a similar study by Grounds (1991), Gunn in his conclusions pushed the point further, by suggesting that there was a relationship between the number of prisoners with mental disorder and too much use of custodial remands for psychiatric examination. This could be considered as a possible indictment of both the professional judiciary and magistrates. The excessive use of custodial remands identified by Grounds (1991) were confirmed by the findings of a study by Dell et al (1993). The study looked at remands and psychiatric assessments in Holloway Prison. The studies results revealed that few women had committed serious offences and most had been remanded because the courts [mainly magistrates] thought they needed psychiatric help. The Dell et al study illustrated clearly that this was a most ineffective way of accessing psychiatric help (Dell et al,1993) and echoed the sentiments of the studies by Gunn (1991). Of the 38 women who left prison on section 37 orders, 34 had their orders imposed by magistrates. In at least half of these cases the magistrates made the order without convicting the defendant. Most of these defendants were simply 'discharged'. The study poses the question as to whether psychotic women needed to be sent to prison before sentence if they were not sent to prison after sentence. It does not attempt to examine or understand what influenced the magistrates in their decision making (disposal).

1.5 Attitudes - To Mental Disorder

One reason why magistrates might deal inappropriately with MDDs, is if they have negative attitudes towards mentally disordered people in general. Since there is no literature which directly examines magistrates positive and negative attitudes of MDD/MDOs, this section will review literature in relation to 'lay public' attitudes - mental disorder/crime and violence, and the possible influence of gender; professional experience .

The term **Attitudes** is described by Atkinson et al (1990) and Bernstein et al (1985) as a predisposition towards a particular cognitive, emotional or behavioural reaction [affinities for and aversions to] - persons, groups, abstract ideas and social policies. These are developed within the individual person as a result of interaction and experience in a social world.

1.5(i) 'Lay public' attitudes to mental disorder/crime and violence

Since magistrates are a diverse cohort of individuals, drawn from the 'lay public' at large, it is not unreasonable to expect this to be reflected in their attitudes and preconceptions in relation to mental disorder and MDDs/MDOs.

An awareness and understanding, of the acceptance and association, of certain behaviours and 'label' terminology by the 'lay public', is a highly relevant consideration when seeking to understand what schema or criteria may influence magistrates in their decision making process involving MDDs. Schoeneman et al (1993) investigated implicit categories of mental illness from samples from 'lay people' and undergraduates. The study's results showed that schizophrenia, and depression were recognised as the most typical disorders. The samples studied also associated violence and disorders of mood, control and intellect with mental disorder. They also reported the samples interpreted reasoning for the onset of mental disorder, as lack of control/responsibility, cognitive deficit or extreme behaviour.

An investigation of public opinion on mental disorders in Norway by Hamre et al (1994) interviewed a random sample of 1,063 people. Their hypothesis was that psychiatric patients were met with prejudice and that the prevalence of mental disorders was underestimated. They reported that one third of the sample thought there was a great difference between persons with mental disorder and those without; with 60% estimating the prevalence of mental disorder to be between 10-50%. Hamre et al interpreted these responses as indicative of negative attitudes. This study did not identify what composition of the sample, if any, had professional/personal experience of mental disorder. Negative public attitudes are also reported by Penn et al (1994). A sample of 329 undergraduates (15-20 yrs) were asked to complete measures of social distance, dangerousness, characteristics and skills in relation to someone who has recovered from a mental illness. The study showed those with no previous contact perceived the mentally ill as dangerous ie. a negative attitude, and increased information regarding mental disorder, did not reduce this negative attitude. The implication taken from this study is that the negative attitudes towards mental disorder are cognitive and deeply ingrained within each individual.

It is disappointing that old 'data' from the 1970s appear to remain the basis for (nearly all) published analysis of attitudes relating to mental disorder, mental disorder and crime (Rabkin, 1974; Bentz and Edgerton, 1970). However, support for these findings can be found in a study by Angermeyer & Matschingers' (1995), which examined the impact of violent attacks on public figures, upon 'lay public' attitudes towards the mentally disordered. The study shows increased social distancing [negative attitudes], by the 'lay public'. Such studies suggest that despite a growing trend towards more positive attitudes, the lack of predictability accompanied by fear of violence continue to be the cause of negative attitudes. The reported tendency for lay people to have stereotypical images of mentally disordered persons as dangerous and unpredictable and to equate mental disorder and violence has been well documented (Rabkin, 1974; Bentz & Edgerton, 1970; Pilgrim & Rogers, 1993). Therefore, it is a reasonable hypothesis to expect to find these tendencies among the cohort of magistrates.

It is possible to argue that attitudes to mental disorder may vary according to gender and professional experience.

1.5(ii) Attitudes - Gender

The influence of gender upon positive/negative attitudes towards mental disorder and MDD/MDOs appears to date untested. Barnes and Maple (1992) indicate that the criteria used for assessing mental health commonly involves different criteria being used for men and women and, by men and women. Heidensohn (1996) points to the dearth of research on gender differences in attitudes held by magistrates or judges and the effect their gender has had upon their disposal [decision making]. While there have been a number of studies, addressing the relationship between gender, mental disorder and offending, more often than not they reveal negative attitudes. An American study by Daly (1994) seeks to examine whether justice is gender-blind and analyses in depth the disposal of female defendants [some of which are reported as suffering from mental disorder]. In doing so she identifies negative attitudes of the judges (who are predominantly male) but fails to consider the influence of the justices gender upon the choice of 'disposal'. Whilst this and a number of other studies look at the effect of gender of the defendant, upon 'disposal' (Pilgrim & Rogers, 1993; Daly, 1994) none consider, the gender of the justice as a variable which might effect the choice of the 'disposal'. Daly (1994) also refers to disparities arising when 'legitimate or illegitimate criteria' are applied inconsistently by justices. In keeping with so many of the studies the positive or negative influence of the justices gender upon these criteria are not considered as a possible source of such disparities. However, whether or not gender differences in attitudes can be justified by the gender schema theory (Bem, 1981) is beyond the scope of this dissertation.

Rafter & Heidensohn (1995) whilst analysing the impact of feminism on criminology describes the 'judge' as being 'the central actor in law , who has traditionally been the autonomous citizen, implicitly a white male'. Their discussions are based upon a call for change from impersonal justice or 'just deserts' [male, negative attitude] to a 'ethic of care' sensitive to the individual need [female, positive attitude]. The 'just desert' negative attitude is supported by

Dell et al (1991), whose study of women defendants in three magistrates courts, revealed single mothers were more likely, than other categories of male or female offenders, to be remanded for psychiatric reports, even though their crimes were mainly trivial, eg.theft.

There is no written data which directly addresses attitudes to mental disorder in relation to a magistrates length of service or age [which correlates with experience gained by length of service]. However, Lundervold and Youngs' (1992) study of 50 older adults [mean age 68.2yrs] attitudes towards the use of mental health service showed a high (74%) negative attitude to mental disorder among these older adults.

1.5(iii) Attitudes - Professional experience

Literature in relation to attitudes of those with professional experience of MDOs is camouflaged by the disciplines to which they belong [see the association of Mental Disorder and Crime 2.ii]. The influence of their professional experience depends upon the philosophy of the disciplines to which they align themselves. Most professionals with experience can be construed as benevolent and possessing a positive attitude, e.g. by attempting to understand and influence change (Prins,1994). Contact with a stigmatised group, such as the mentally disordered, has been shown to improve attitudes. This was demonstrated by a study which looked at 78 correctional officers perceptions of mentally disordered prisoners (Fraser & Burnbury,1989), the results showing an increasing awareness of mental illness in general and a positive motivation towards more training.

1.6 Summary

Government reviews, reports and policy documents combined with evidence from a wide range of academic literature, clearly illustrate that too many MDDs/MDOs **are inappropriately dealt with by the criminal justice system, and that custodial remands are an unsatisfactory way of seeking treatment for MDD/MDOs.** This review demonstrates **that the magistracy have a responsibility to ensure appropriate disposals of cases involving MDDs/ MDOs.** It raises the following questions which will be addressed in the remainder of the dissertation:

- a) What is the level of knowledge among magistrates of their existing powers under the 1983 Mental Health Act and best practice relating to MDDs/MDOs ?
Does this level of knowledge influence their choice of disposal ?
- b) Do magistrates have preconceived understanding of mental disorder (e.g. lay or professional experience, length of service) and does this influence their disposal?
- c) The literature review has shown that the gender of a defendant can effect the courts choice of disposal. Similarly, does the gender of a magistrate effect the choice of the disposal?

In the light of these questions and the relatively little direct examination of how individual magistrates perceive and manage MDDs/MDOs, a questionnaire was designed.

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Chapter 2 METHOD

2.1 Design

A sample of magistrates took part in a large scale postal survey of: (1) attitudes and, (2) knowledge with regard to MDD/MDOs. Their responses were analysed according to gender, length of service as a magistrate, and professional contact with mentally disordered people.

2.2 Sample

681 magistrates were invited to take part in the survey from two groups :

2.2(i) Local Sample (N = 467)

The questionnaire was sent to all currently serving magistrates at three North West Magistrates Courts. These were selected after careful discussion and ascertainment that the three Clerks to the Justices were willing to co-operate with the research. The demographic details for each of the three courts are as follows :

Court A serves a densely populated inner city area with a high proportion of deprivation, a high percentage of long term unemployment and a high ethnic mix.

Court B serves a mixed urban area spanning, a densely populated, deprived urban area with high unemployment, poor housing, with some ethnic mix, to a prosperous rural area.

Court C serves a small prosperous county city, with pockets of poor housing and unemployment.

Distributing the questionnaire to more than one magistrates bench reduced any individual court sample bias. To avoid any possible local or cultural bias the questionnaire was sent to Madingley Hall (Cambridge) (see below 2.2(ii)).

2.2(ii) National sample (N = 175)

A Total of 175 magistrates who attended or were attending courses during 1994/1995, at the University of Cambridge Board of Continuing Education, **Madingley Hall**, also received the questionnaire. Courses are organised for magistrates who wish to develop and extend their skills. Attendance on such courses is voluntary and often motivated and financed by either the individual magistrate themselves or by their local bench. The Magistrates accessed here came from all over England and Wales. Respondents in this group came from Lincolnshire, Devon, Bristol, Surrey, London, East Anglia, Leicestershire, Cumbria, Derbyshire, Midlands, Shropshire, Yorkshire, Mid and North Wales.

Participation was voluntary in both samples.

2.3 The Questionnaire (full questionnaire see appendix 1)

The questions were constructed to identify knowledge and attitudes of MDDs/MDOs and how the court deals with them. In compiling the questions care was taken to avoid ambiguity, impression and assumption, emotive language and offence. The positioning of the questions in the questionnaire were arranged so as to avoid a response bias - discouraging habitual answering from one question to the other and encouraging thoughtful answers to each individual question. Further consideration was given to the positioning of the more searching and penetrative questions which were grouped in the middle of the questionnaire.

The following main areas were addressed in the questionnaire:

2.3(i) Demographic and professional aspects:

Gender, age, length of experience as a magistrate [less than 5, 5-9, 10-14, 15-19, 20-24, 25+], professional experience of working with mentally disordered people [yes/no]. Sample [Local or national].

2.3(ii) Knowledge and Attitude

These two dependant variables were represented in the questionnaire by two discrete groups of questions from which two scales were developed:

Knowledge of Court Procedure Scale (KCPS), Positive Attitudes to Mentally Disordered Offenders Scale(PAMDOS).

Knowledge of Court Procedure Scale [KCPS] = Seven questions
[q26],[q27],[q28],[30],[q33],[q34],[q35] for example:

[q26] Can you remand a mentally disordered offender to hospital for summary offences only?
Yes/No

[q30] Can you make psychiatric treatment part of a community sentence? Yes/No

A score of 1 was given for each correct response. A minimum of 0 [no correct answers] to a maximum of seven was possible for each respondent.

Positive Attitudes to Mentally Disordered Offenders Scale (PAMDOS) = ten questions.

To gain a balanced assessment of attitude five questions = represented attitude to disposal -
[q7],[q9],[q10i,10ii],[q13], for example:

[q7] 'Most repetitive summary offences are committed by people who are mentally disordered'
five questions represented attitude to mental disorder [q15],[q16],[q17],[q19],[q20],

for example:

[q15] 'Mentally disordered people are more likely than others to commit criminal offences'.

A Likert Type Attitude Scale (1932) was used to ask responding Magistrates to indicate strength of agreement or disagreement with a given statement. Responses for PAMDOS questions were measured using the Likert 'type' Attitude Scale and attaching a score for a positive or negative response, see below:

A score for a	positive attitude		negative attitude
	+2	<i>strongly agree</i>	-2
	+1	<i>agree</i>	-1
	0	<i>undecided</i>	0
	-1	<i>disagree</i>	+1
	-2	<i>strongly disagree</i>	+2

A minimum of 0 to maximum of 20 was possible for each respondent.(Summers,1977; Coolican,1994).

2.3(iii) Personal constructs of mental disorder (3 questions)

- [q4] Magistrates were asked to provide a definition of mental disorder, using their own words.
- [q5] Magistrates were asked to tick, from a list of eight phrases, e.g. 'talking to self' (see l full questionnaire - appendix 1, those which they felt describe a significant indication of mental disorder.

[q6] Required magistrates to tick from a list of nine terms those which they considered constitute or suggest mental disorder, eg. schizophrenia (see full questionnaire appendix 1. Space for supplementary and unstructured comment followed [q5] & [q6].

2.3(iv) Miscellaneous

Magistrates awareness of other agencies with professional interest in mentally disordered offenders (2 items) for example:

[q29] 'Do you know what the role of an approved social worker is in relation to mentally disordered offenders?' answer - yes/no,

[q31] required a response only if it was affirmative.

Experience of administering justice to mentally disordered offenders (7 items), for example:

[q25] 'Have you ever experienced difficulties in setting suitable bail conditions for a defendant diagnosed as mentally disordered?.'

[q22],[q32],[q36],[q37] - Answers Yes/NO, with the exception of [q23] which required the respondent to select an answer from a list of five and [q24] which required a selection from yes/no/sometimes.

The facility for respondents to expand their answers freely in a relatively unstructured way followed [q4],[q5],[q6],[q10],[q14]. An opportunity for further unstructured comments was accommodated for at the end of the questionnaire.

A **covering letter** was sent to each participant. This addressed the purpose of questionnaire, indicated official approval, confidentiality and anonymity, that a summary of the findings would be made available, and appropriate instructions and date for the return of the questionnaire. A

brief explanatory note outlining the background of government policy and citing circulars 60/90 and 12/95 to the research was also attached to each questionnaire (see Appendix 2).

2.3(v) Process of finalising Questionnaire

The National Association for the Care and Resettlement of Offenders (NACRO), (Mental Health Division) agreed to fund the production and distribution of the questionnaire to the 3 courts and Madingley Hall College. They were also consulted on the format, composition, and content of the questionnaire.

A **pilot questionnaire** was sent to twenty people from a variety of disciplines (**Advice Group members**). Supplementary questions were asked, as to whether they considered the questionnaire and questions devised appropriate to the aims and objectives of the research. Amendments to the design and content, were made in direct response to the comments obtained from the pilot questionnaire, with the hope of removing any ambiguities. The final draft of the questionnaire was approved by all the Clerks to the Justices for each court and N.A.C.R.O .

2.4 Ethical Issues

Ethical Advice and approval was sought from the Home Office C3 Division for the research project. The only prerequisite from the Home Office was assurance of anonymity of the individual responding magistrates and for each of the three magistrates courts. Views and advice on ethical considerations were also sought from both NACRO and the 'Advice Group' (see 2.3.v page 35).

2.5 Procedure

Formal approaches by way of a written research proposal were submitted to each Clerk to the Justices, and the respective Bench Chairman of the three magistrates' courts and to the Principal of Madingley Hall, Cambridge seeking their permission and co-operation with the research.

Once agreement, from the afore-mentioned, to participate in the research was obtained, further consultations with regard to procedures relating to distribution, collection and final dissemination of the research results and a protocol were agreed.

Distribution of the questionnaires was for one court via its internal mailing system, which comprises of pigeon holes marked alphabetically and relies upon each magistrate to collect their post when they are next in the court. The other two courts enclosed the questionnaire with other court business and posted it directly to each individual magistrate. Madingley asked those magistrates undertaking courses, to complete the questionnaires during their attendance. They also included the questionnaire with other correspondence to magistrates who had attended courses at Madingley Hall during the period 1994/1995.

Collection - Arrangements for the Questionnaire responses were devised, for all courts, to be returned via the internal mailing system (a box situated in each courts justices retiring room). However some magistrates voluntarily felt it appropriate to incur the cost of postage. A court official in each court was given the responsibility of collecting the questionnaire responses and forwarding them onto the researcher.

Madingley responses were either collected at the time of the courses or returned to the college by post, with the magistrates voluntarily incurring the cost of return postage. The responses were collected together and sent to the researcher.

2.6 Methods of Analysis and Variables

The significance of the 'grouping variables', gender, professional experience, length of service upon the two main dependent variables, attitude and knowledge, were examined using the Mann Whitney U-Test, Kruskal Wallis Test and chi-square test of association .

The Home Office figures show the national male/female ratio of magistrates is 3:1 (1981). There are no national figures for the other grouping variables identified in this study. This data varies within each bench. Consideration to maintaining anonymity meant it was not possible to control these variables. Statistical analysis of each of these 'grouping' variables in relationship to individual questions was undertaken.

Statistical analysis of the KCPS [knowledge scale see page 32] and PAMDOS [attitude scale see page 33] using the Mann Whitney-U Test and the Kruskal-Wallis Test were performed in relation to the 'grouping' variables. In the results section I have commented only on those found to have statistical significance. Statistical analysis was performed using the Mini tab Computer programme.

Qualitative data (e.g. open comments) will be presented by: i) the identification of certain recurring words and topics; ii) verbatim quotations from the responding magistrates used to support the statistical data.

CHAPTER 3 RESULTS

In this chapter the following topics will be addressed:

A Characteristics of the sample

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3.3	Professional experience of working with mentally disordered people	page 39

B Magistrates' Attitudes and Knowledge relating to Mentally Disordered Defendants

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C	Overall Summary of key findings	page 57

A Characteristics of the sample

3.1 Response rates to Questionnaire

The total response rate was 28.7% (187 of 651). The recorded response rate from the three North West courts (local sample) was 21.8% (104 of 476 questionnaires) and 47.4% (83 of 175 questionnaires) from Madingley (national sample). Overall 55.6% of analysed responses were local and 44.4% of analysed responses from Madingley.

3.2 Demographic characteristics of the sample

Age: There are relatively few in the combined 20-49 age group (22.5%), with the majority age distribution occurring beyond 40-49 (43.4%) and 60-69 (34%). No respondents fell into the 70+ category and 5 did not respond to this question.

Gender: Of the total responses there were 51.1% (91) male and 49% (87) female; 9 failed to enter any gender response. There was a greater percentage of males in the local sample (55%) as compared with the Madingley sample (45%) but this was not statistically significant.

Length Of Service: Most of the sample 156/187 (83.87%) had more than five years service as a magistrate and 25% had more than 20 years service as a magistrate.

The most commonly occurring category for length of service was 10-14 years (29.3% = 54). When comparing length of service in terms of 'local' and Madingley (see appendix 1 & 2), it was noted that the Madingley Magistrates were significantly ($\chi^2 = 18.9, df.5, p < .01$) more senior in their length of service .

3.3 Professional experience of working with mentally disordered people

A large majority of the responding magistrates **83% (157)** had **no** professional experience of dealing with people who are mentally disordered, leaving a small group of **30 (16%)** reporting professional experience. This discrete group was considered with gender and length of service as an independent variable and statistical analysis was undertaken to look at its possible association with knowledge and attitude (dependent variables) and any significant differences are reported.

B Magistrates attitudes and Knowledge relating to Mentally Disordered Defendants

3.4 Level of knowledge among magistrates of their powers and the procedures in relation to the mentally disordered defendant.

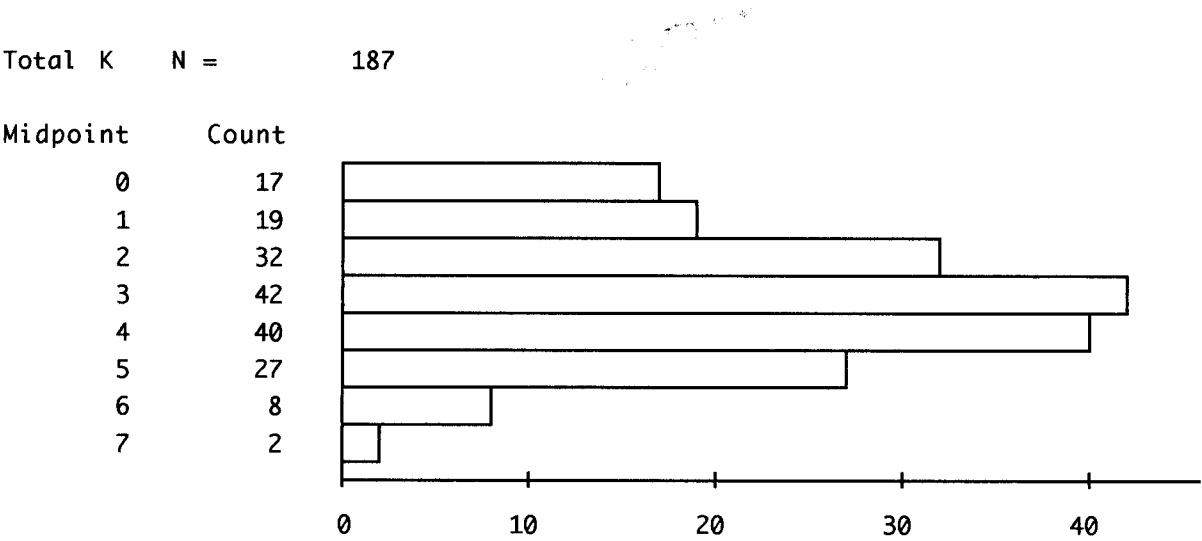
Overall magistrates level of knowledge (KCPS) was low (see table 1 below).KCPS mean 3.027, st.dev. 1.661, min. 0.000 and max.7.000.

Table 1: KCPS: % of Magistrates with correct knowledge	
Question	%Correct
35	75.4%
28	68.9%
33	47.5%
30	33.7%
34	29.9%
27	28.9%
26	18.2%

The lowest correct response was q26 'Can you remand a mentally disordered offender to hospital for summary offences only?' [correct answer YES]. When magistrates individual level of correct answers were calculated only 58.8% of magistrates achieved three correct answers (see correct answers identified - appendix 1). The frequency figure distributions are shown in figure 1, page 41.

Magistrates level of knowledge were statistically analysed using the Mann Whitney - U Test and the Knowledge of Court Procedure Scale (KCPS see method 2.3 (ii) page 32) with particular reference to the three independent variables - gender, length of service and professional experience.

Figure1 : Frequency distribution: Knowledge



The overall findings showed **no difference** in knowledge between the groups in terms of gender or length of service and therefore the null hypotheses for each of these two 'grouping' variables stand. The Kruskal Wallis test did not identify any significant differences in relation to length of service $H=4.47, df=5, p=0.485$). However, there was a slightly higher mean 3.567, st.dev. 1.524 for the group of magistrates with professional experience compared to magistrates with no professional experience mean 2.924, st.dev. 1.670 and this difference approached statistical significance $p=0.07$.

The questions contained in the KCPS [see page 32] were subjected to individual analysis using the chi-square test in relation to the three 'grouping' variables. The only significant finding was that magistrates with greater length of service were significantly ($\chi^2 = 20.823, DF=10, p<0.05$) more likely **to know** whether a defendant can be remanded to a psychiatric hospital as a condition of bail, if they agree to go voluntarily.

3.4(i) Miscellaneous

Magistrates levels of **awareness of other 'professional' agencies roles and responsibilities with regard to the MDDs**, were also considered and analysed in relation to the three independent variables.

The vast majority of magistrates stated that they were **unaware** of the **protocols** (procedures) and **departmental policies** in respect of MDOs. To give a clear demonstration of the low level of awareness the data is presented in a Table 2 (see below).

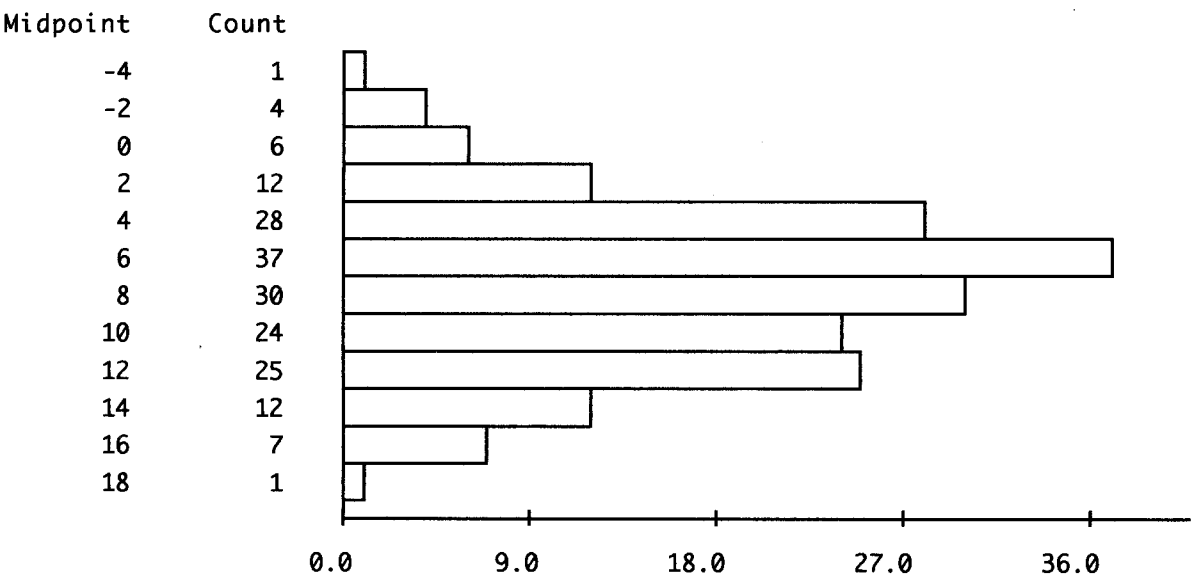
Table 2: % of responses protocol and departmental policies (i.e. aware)		
9.1%	Police	
5.9%	Crown Prosecution Service	
5.4%	Probation Service	
11.8%	Social Services	
12.3%	Health Service	
14.4%	Home Office	

Furthermore, the majority of magistrates (74.9%) were **unaware** of what the role of an Approved Social Worker is in relation to MDOs. Of the 16% who responded they did know, none described the role.

No significant differences were found for either gender or professional experience with regard to knowledge. Whilst statistical analysis showed a significant association between length of service and awareness of police ($\chi^2 = 11.966$, $DF=5$, $p<0.05$) and Home Office ($\chi^2 = 12.002$, $DF=5$, $p<0.05$) protocol and departmental policies but not for any of the other categories questioned.

Figure2 : Frequency distribution: Attitude

Total A N = 187



3.4(ii) Summary: Knowledge

- Magistrates' knowledge of the procedure for disposal of MDOs was very variable. In most questions a minority only gave the correct answer.
- Overall professional experience did not indicate improved knowledge.
- Magistrates' awareness of other agencies with professional interest in MDOs was demonstrated to be deficient in most areas questioned; with isolated areas of improved awareness in longer serving and Madingley magistrates.
- Madingley magistrates demonstrated a better level of knowledge than the local magistrates.

3.5 Analysis of attitudes amongst magistrates in relation to the mentally disordered defendant/offender.

In this section the attitude amongst magistrates of MDDs will be considered. These attitudes will be analysed using the Mann Whitney U-Test and the Positive Attitudes to Mentally Disordered Offenders Scale (PAMDOS see method 2.3 (ii), page 32) with particular reference to the 'grouping' variables gender, length of service and professional experience. Further analysis of each individual question in relation to the 'group' variables were performed using the chi-square test.

The mean, median attitude scores in relation to PAMDOS were respectively 7.15, 7.00 out of a possible 20 (Stand.dev. = 4.3). The frequency distributions are shown in figure 2, page 44 . For an analysis of each of the questions included in PAMDOS, the % showing a positive attitude response, are recorded in Table 3 page 46.

Table 3:PAMDOS: % positive attitude response per question.			
		<i>Question</i>	<i>% positive attitude response</i>
attitude to disposal	(9	89%
		10i	80%
	{	10ii	79%
		13	99%
)	15	86%
attitude to mental disorder	(7	82%
		16	68%
	{	17	40%
		19	59%
)	20	27%

Table 3 shows [q13] 'Information about a mentally disordered offender's past and current mental state is needed if the courts are to make the best decisions in respect of remands and sentence following conviction.', produces the highest positive attitude response (99%), whilst [q20] 'Mentally disordered offenders are unsuitable for probation hostels' produces the lowest positive attitude response (27%).

3.5(i) Analysis in relation to magistrates gender

Females were shown to have a more positive attitude towards MDDs/MDOs (Mann Whitney U-Test significant at 0.04 and the expected hypothesis is accepted.

The PAMDOS scores of male and females are shown in table 4 below:

Table 4: PAMDOS Gender scores						
	Mean	Median	Stand.Dev	Min	Max	
Male	6.400	6.000	4.201	-4.0	16.000	N=91
Female	7.7360	7.000	4.208	-2.0	17.000	N=87

Further analysis of individual questions using the chi-square test showed female magistrates were significantly more likely to agree that a mentally disordered person should not be remanded to prison custody simply to receive psychiatric assessment or treatment ($\chi^2=12.192$, DF=4, $p<0.05$). Female magistrates expressed their agreement, significantly more strongly , that information about a MDDs past and current mental state is needed if the courts are to make the best decisions in respect of remands and sentence following conviction ($\chi^2=6.921$, DF=2, $p<0.05$) and were significantly less likely to consider mental health should be ignored when considering sentence ($\chi^2=9.530$, DF=4, $p<0.05$).

Female magistrates were more likely to consider a greater percentage of criminal offences to be committed by people who are mentally disordered than male magistrates, but this difference was not statistically significant $p<0.1$ ($\chi^2=6.320$,DF=3).

	<i>Total M</i>	<i>M</i>	<i>Total F</i>	<i>F</i>	<i>x²p</i>	<i>Total</i>	<i>Professional Experience</i>	<i>TOTAL</i>	<i>No. professional experience</i>	<i>x²p</i>
	N=91	%	N=87	%		N=30	%	N=157	%	
Talking to self	46	50.1	52	59.7	-	22	73.3	83	52.9	$\chi^2=4.285, DF=1, p<0.05$
Alcohol abuse	26	28.6	36	41.4	-	14	46.7	52	33.1	-
Use of illegal drugs	19	20.8	33	37.9	$\chi^2=6.254, DF=1, p<0.01$	10	33.3	45	28.7	-
Staring into space	50	54.9	57	65.5	-	24	80	91	58	$\chi^2=5.166, DF=1, p<0.05$
Wanting to die	52	57.1	51	58.6	-	17	56.6	91	58	-
Physical aggression	47	51.6	50	57.4	-	20	66.7	85	54.1	-
Uncontrolled movements	58	63.7	53	60.9	-	22	73.3	95	60.5	-
verbally threatening	39	42.9	46	52.8	-	19	63.3	72	45.9	-

Table 5 Proportion of Respondents citing each term as indicative of mental disorder by gender and professional experience

3.5(ii) Analysis in relation to magistrates length of service

The Kruskal Wallis Test did not identify any significant differences, between short (mean 6.667, st.dev 4.011) and long service (mean 6.00, st.dev 5.15) as a magistrate, in relation to overall attitude ($p=0.0887$, $H=1.71$, $df=5$).

However, statistical analysis of individual questions using the chi-square test, showed magistrates with **greater length of service** to be significantly ($\chi^2 = 32.067$, $DF=20$, $p<0.05$) more likely to strongly agree/agree that a mentally disordered person should **not** be remanded to prison custody simply to receive psychiatric assessment or treatment. Furthermore they were significantly ($\chi^2 = 28.217$, $DF=10$, $p<0.01$) more likely to agree strongly that information about a MDDs past and current mental state is needed if the courts are to make the best decisions in respect of bail/remands and sentence following conviction.

3.5(iii) Analysis in relation to professional experience.

The Mann Whitney U-Test did not identify any significant differences between magistrates with professional experience and those with no professional experience in relation to overall attitude (PAMDOS) $<p=0.05$ (see Table 7 page 51). Therefore the hypotheses cannot be rejected.

	Total M	M	Total F	F	$\chi^2 p$	Total	Professional Experience	TOTAL	No -professional experience	$\chi^2 p$
	N=91	%	N=87	%		N=30	%	N=157	%	
Schizophrenia	85	93.4	83	95.4	-	29	96.7	154	98.0	-
Depression	53	58.2	63	72.4	$\chi^2=3.935, DF=1, p<0.05$	25	83.3	95	60.5	$\chi^2=5.70, DF=1, p<0.05$
Alcohol abuse	18	19.8	22	25.3	-	10	33.3	34	21.7	-
Sexual deviation	26	28.5	31	35.6	-	10	33.3	51	32.4	-
Personality disorder	64	70.3	77	88.5	$\chi^2=8.924, DF=1, p<0.01$	26	86.7	123	78.3	-
Drug abuse	17	18.7	22	25.3	-	9	30.0	33	21.0	-
Psychosis	63	69.2	79	90.8	$\chi^2=12.831, DF=1, p<0.01$	28	93.3	122	77.7	$\chi^2=3.875, DF=1, p<0.05$
Low IQ	14	15.4	15	17.2	-	6	20.0	27	17.2	-
Self harm	72	79.1	69	79.3	-	20	66.7	127	80.9	-

Table 6 Proportion of Respondents citing each term as indicative of mental disorder by gender and professional experience

Table 7 PAMDOS scores Professional and no professional experience

	Mean	Median	Stand.Dev	Min	Max	
Prof. Experience	8.000	8.000	4.962	-2.000	16.000	N=30
No professional experience	6.987	7.000	4.082	-4.000	17.000	N=157

Looking at individual questions, magistrates with professional experience were significantly ($\chi^2 = 10.449, DF=4, p<0.05$), more likely to strongly agree that MDDs have the same right to be granted bail as anyone else. They were also significantly ($\chi^2 = 17.134, DF=4, p<0.01$) more likely to disagree/disagree strongly that mentally disordered people are more likely than others to commit **particular** types of criminal offences. The 'grouping' variable of professional experience was significantly ($\chi^2 = 9.526, DF=4, p<0.05$) more likely to strongly disagree that mentally disordered people are more likely than others to commit criminal offences. Whilst the aforementioned items all fall within the PAMDOS positive attitude scale, magistrates with professional experience were significantly ($\chi^2 = 12.787, DF=4, p<0.05$) more likely to agree (PAMDOS - negative attitude) that MDDs are unsuitable for probation hostels.

3.5(iv) Summary: Attitudes

- Magistrates had a positive attitude towards the history of mental disorder when considering disposal but demonstrated a less positive attitude towards mental disorder.
- Female magistrates and longer serving magistrates were significantly inclined to a more positive attitude towards MDDs. Both 'groupings' agreeing that MDDs should not be remanded in custody simply to obtain psychiatric reports and that information about MDDs current and past mental health state is needed for courts to make the best appropriate disposals.

- Male magistrates were found to have a less positive attitude being inclined to a consider mental health should be ignored when considering sentence[q10ii].
- Magistrates with professional experience were found to have a more positive attitude towards MDDs with one exception that they did not agree that MDDs were suitable for Bail Hostels.
- Overall there was no effect of length of service upon attitude although there was a more marked positive attitude demonstrated in responses to history of mental disorder, and remands in custody for reports.

3.6 Miscellaneous

3.6(i) Personal Constructs of Mental Disorder

In this section we will consider the responses of magistrates in relation to their personal constructs of mental disorder. It will be recalled that respondents were asked to examine a list of terms, and tick those which they consider are indicative [q5] and constitute [q6] mental disorder [full list see appendix 1). The responses were considered with particular reference to variations according to gender, length of service and professional experience.

3.6(ii) Analysis related to the 'grouping' variables

Some significant differences were found in the analysis of [q5] and [q6] in relation to gender and professional experience (see Tables 5 & 6 pages 48 and 50). There were no significant differences found in relation to length of service .

3.6(iii) A preliminary analysis of unstructured comments

79 magistrates took the opportunity to make further unstructured comment following question 5. An analysis of the comments highlighted that whilst magistrates may consider the presence of one of the phrases listed (see appendix 1, q5) indicative of mental disorder 25 magistrates were more likely to consider the presence of more than one, in combination, to be indication of mental disorder.

“all of these 'could'/'might' indicate mental disorder”

“significant in combination”

*“no-one of the above could be a significant indication;
a combination of a number of factors might. Many of the above
could be exhibited from time to time by 'normal' persons”*

Only 4 magistrates failed to give a response to the open question ‘What do you understand by the term 'mental disorder'’. An examination of the responses reveals a range of recurring terms used by magistrates to describe their perceptions of MDD/MDOs, such as :

‘categorically different from 'normal' people’

‘abnormal’, ‘irrational’

‘inability to control themselves - actions’

‘thinking and behaviour irrational’

‘inability to function rationally’

‘poor decision making’

‘illness of the mind’

‘incapable of integrating and living by standards expected in society’

Terms and phrases used are often judgmental, for example, - incapable of integrating with other people, unable to think for themselves, decision making is impaired; and moralistic, for example, lack of responsibility. Among the responses the most persistently recurring words are 'control', 'abnormal', 'irrational' and with a predominant use of medical adjectives, for example: “ medically diagnosed”, “sick in the mind”, “brain damage and dysfunction” , “diagnosable disorders”.

FINAL COMMENTS

63 magistrates availed themselves of the opportunity to make comments or points arising from the questions asked, or matters that they considered to be relevant and important in relation to MDD/MDOs. Many magistrates [31, N=63] referred to a need for the introduction and development of training focusing on the issues relating to MDD/MDOs and [15, N=63] were generous to suggest that the questionnaire had raised their awareness to their lack of knowledge and training in this area, e.g. 'After completing this questionnaire I find I know very little about the law and MDOs'. Recurring comments included:

'Whole issue of people with 'mental' disorders needs time, energy and money spending on it - people appear in court on a trivial offence magistrates feel they need help/care/ understanding not punishment but need more info/guidance re: MDOs'.

'I don't think training of magistrates bears sufficiently on this problem. It should in the future'.

'Lack of knowledge, and training'.

'Magistrates need more training'.

'Need more options to be available to us'.

'Limited options available'.

'What is available?'

'Limited experience'.

'My knowledge is very limited'.

'Seek advice'.

'Little information'.

'Delays with reports'.

'Delays and difficulties with other agencies'.

And finally the most frequent recurring comments were related to 'care in the community', for example:

'the so-called 'Care in the Community' approach lacks credibility. It should be more aptly described as a policy of Benign Neglect!!!'

'a problem which will only be exacerbated by the present policy of care in the community and the closure of psychiatric hospitals'

'need proper training as the MDOs are on the increase due to Care in the Community!!!! We cannot 'care' for these people, we are unable to deal satisfactorily as we are told there is no alternative for mentally disordered offenders. Care in the community for the mentally ill does not work. The safety net of home care backed up by well trained carers would I believe save society from many of the so-called crimes that the mentally ill commit'.

3.6(iv) Experience of administering justice to mentally disordered offenders

Experience of administering justice to MDD/MDOS will be considered with reference to variations according to gender, length of service and professional experience.

Estimation by each magistrate of the number of MDDs per year which appear before them analysis in relation to three 'grouping variables revealed no significant differences. However, the overall % estimation was low [see table below]

Table 8: % Estimations of number of MDDs per year in court, before each magistrate

<i>Frequency/Year*</i>	<i>N=179</i>	<i>%</i>
Never	4	2.2%
1-3	71	39.7%
4-6	56	31.3%
7-9	18	10.1%
10+	30	16.8%

* 8 = no response

Use of custodial sentences - 86.6% of magistrates responded that they have had cause to use a custodial remand or sentence as an alternative was not available locally or not available because they were full/oversubscribed. In addition 33.2% of magistrates reported having to use a custodial remand or sentence for a MDO because of excessive delays in reports being prepared and made available.

A significant difference ($\chi^2 = 21.974$, $DF=10$, $p<0.05$) was found with magistrates with **less length of service** more likely to report that 'no alternative existed locally' whereas magistrates with **longer service** were significantly ($\chi^2 = 22.099$, $DF=10$, $p<0.05$) more likely say that 'alternatives were not available because they were full or oversubscribed'.

Magistrates from Madingley were more likely ($\chi^2 = 23.930$, $DF=10$, $p<0.01$) to report that 'no alternative existed locally' and were more likely to report 'excessive delays' than local magistrates. Madingley magistrates compared to local magistrates were significantly ($\chi^2 = 11.946$, $DF=2$, $p<0.01$) more likely to use a custodial remand or sentence for MDD/MDO because 'no alternative existed locally' and because of 'excessive delays with reports' ($\chi^2 = 9.767$, $DF=2$, $p<0.01$).

Bail Conditions

67% of magistrates reported experiencing difficulties in setting suitable bail conditions for a defendant diagnosed as mentally disordered. It was noted that magistrates with **greater length of service** were significantly more likely to report difficulties in setting suitable bail conditions ($\chi^2 = 10.991$, $DF=5$, $p<0.05$).

Bail Information Officers

While 54.95% of magistrates stated that they had never sought information from the bail information officer 45.5% of magistrates stated that they had.

Supervision Order

A majority of magistrates [61%] had never made a supervision and treatment order.

Probation Order with conditions of psychiatric treatment

While approximately half [50.89%] had made a probation order with conditions of psychiatric treatment.

Guardianship Order

A larger majority [87.7%] had not made a Guardianship Order.

Psychiatric Reports

60% of magistrates 'sometimes' felt that psychiatric reports left them wanting further clarification/information.

C Overall Summary of Key Findings

- i) The level of Magistrates' knowledge of the procedure for disposal of MDD/MDOs was low (see also summary 2.3).
- ii) Magistrates were found to have a positive attitude towards the history of mental disorder when considering the disposal of MDD/MDOs; although Magistrates were shown to have a less positive attitude towards mental disorder (see Table 3, page 46). However, female magistrates and more experienced magistrates gave greater weight to the issue of mental disorder (see also summary 3.5(iv) page 51)
- iii) Magistrates find facilities and options for the handling and disposal of the mentally disordered in the magistrates court extremely deficient, limited and frustrating. At the same time they have low estimations: a) as to the numbers of MDDs that they experience in their courts; b) use of treatment orders and requests for reports. There were a number of significant differences noted in the 'grouping' variables.
- iv) Magistrates considered the 'care in the community' policy to be a reason for the increase of mentally disordered appearing in the courts.
- v) Magistrates showed variable estimates of the importance of mental disorder in criminal behaviour.
- vi) The questions on personal constructs of mental disorder produces some significant differences in relation to gender and professional experience.

Chapter 4 DISCUSSION

It has been established in the literature review (see pages 6-27) that there are now very clear recommendations directed to the judiciary (i.e. magistrates) with regard to the management and disposal of MDD/MDOs. However, there is little available evidence of developments or research which has specifically examined and focused upon magistrates' knowledge and attitudes relating to MDDs; and the effect of these upon their management and 'disposal' decisions of MDDs in court. Parry and Watts (1989) suggest that:

“Good solid research is the best way to change conceptual frameworks as well as the behaviour of policy makers and practitioners”

It is with this in mind that the research set out to assess the level of knowledge and attitudes amongst magistrates, any influence of gender, length of service, professional experience and their impact upon disposal.

The first half of the discussion will focus upon

4.1 Magistrates' knowledge relating to Mentally Disordered Defendants,

the second upon

4.2 Magistrates' attitudes relating to Mentally Disordered Defendants,

and in each, their impact upon 'disposal' and the influence upon each of the three grouping variables.

4.1 Magistrates' knowledge relating to Mentally Disordered Defendant

The study has shown the level of knowledge, in relation to current government and local policies, procedures of disposal, other agency roles and responsibilities, to be low. Gender was not found to influence these and overall professional experience was not found to be indicative of a higher level of knowledge. There were a few isolated areas of improved awareness of other agencies roles and policies identified among the longer serving magistrates (see results 3.4(i)).

It is apparent from the research findings, which showed only a minority of magistrates were knowledgeable, that to date there is a genuine need to improve magistrates' level of knowledge and understanding of the 1983 Mental Health Act, procedures and policies in relation to the MDDs. The research results imply that magistrates have received little, if any, specific training on mental health issues, that considerations of appropriate training and dissemination of information have been poorly served, and accorded a low priority. These findings validate views expressed at the Mental Health Foundations Regional Conference (Newman,1994) (HMSO cir.66/90) which called for the need to improve training.

Further evidence in the results, showed magistrates' poor awareness and knowledge of the other agencies roles with regard to MDDs. These results are consistent with Blumenthal and Wessely (1992) and Holloway and Shaw (1992) findings which focused on the need for more training and understanding of the roles of other agencies. Furthermore, the results clearly demonstrate that there is no correlation between a magistrates' length of service or professional experience and a better knowledge and understanding of procedure for disposal of MDOs or of the protocols and departmental policies. This indicates the need for **specific** training relating to MDDs/MDOs, for **all** magistrates. These results are further supported by both academic studies and government mental health reviews (see for example BPAG,1992; Thatcher,1992.Literature Review pages 6 -27) which highlight the need to develop better training and dissemination of information for magistrates .

The low level of knowledge revealed by the study supports the impression of an apparent negation by many magistrates courts committees to confront the issues surrounding the MDDs. One such example is Diversion. Despite strong recommendations by the Reed Committee (1992) for all magistrates courts to adopt court based assessment and diversion, only 100 out of a possible 600 magistrates' courts run diversion schemes [1995 figures]. The slow take up of diversion initiatives is even harder to comprehend when those courts with diversion schemes report very positive results and an increase in the numbers of identified MDDs (Sandells, 1994; James and Hamilton, 1991; Joseph and Potter, 1993). The poor level of response to the diversion initiative could be interpreted as a further reflection of the low priority and less positive attitude, [to be discussed], to the issues relating to MDDs. The recurring excuse used by the courts and by some responding magistrates in this study was that the numbers of MDDs were so small that it did not warrant the investment of time and money.

The results of the study are consistent with Sandell's (1994) findings, that many magistrates appear to disassociate themselves from the national picture, and believe the number of MDDs who appear before them to be insignificant. These results and conclusion are derived from the magistrates low assessment of MDDs appearing before them, and in their low estimation of the percentage of criminal offences which are committed by people who are mentally disordered. The study reveals that there exists a disparity between the magistrates views and low estimation of MDDs [72% = 0 - 6 MDDs per magistrate, Table 8 page 55] and the reported increase of numbers of MDD/MDOs identified by the various diversion schemes (see lit review). Whilst it may be reasonable to suggest that the magistrates findings go some way to support Brabbins and Travers (1994) study (see lit. review page 22), which failed to confirm an increasing number of mentally disordered passing through the magistrates courts; these findings are contradicted by many of the responding magistrates unstructured comments (see results 3.6 (iii)) which report they are seeing the numbers of MDDs steadily increasing. At the same time, magistrates clearly associate the increase of MDDs appearing in court directly to the closure of long stay institutions and the move to the 'care in the community' policy (see page 55). Thus confirming the views of magistrates reported by Browne (1990). The

combination of a few highly publicised cases involving MDDs over the last few years, has intensified public anxiety and concern, and to a degree these concerns, and the accompanying less positive attitude to mental disorder, are reflected in the magistrates open comments for example:

*Mentally Disordered Offenders are on the increase due to
'Care in the community!!!'* (A magistrate)

As revealed by the literature review (pages 6-27), emphasis has been placed upon the 'diversion' of the MDD away from the criminal justice system (Blumenthal and Wessely, 1992; Joseph and Potter, 1993b). However, there appears to have been a lack of focus and concern as to the plight of those MDDs who still find themselves before magistrates, and the subsequent difficulties and dilemmas faced by those magistrates'. These dilemmas and difficulties are clearly demonstrated and exposed by the study, showing the majority of magistrates [86.6%] using custodial remands or sentence because an alternative disposal was seemingly unavailable or oversubscribed. Such concern is further compounded by a further third [33.2%] of magistrates declaring the use of custodial remand because of excessive delays in the preparation of reports (see: results section 3.6).

These results confirm previous reports (Dell et al, 1991; Prins, 1994a) of excessive use of custodial remands for the wrong reasons, such as preparation of reports (Grounds, 1991a), or as a means of accessing health services (Dell et al, 1991; 1993). Significantly magistrates with longer service suggested that unnecessary custodial remands were more often due to the fact that access to alternative services such as hospital psychiatric facilities and bail hostels were blocked because they were oversubscribed. Furthermore, confirmation that such difficulties are not isolated geographically, are illustrated by more magistrates in the national sample [Madingley] identifying difficulties with excessive delays and lack of available alternatives, with the consequence they report a greater use of custodial remands. There is a consensus of opinion to be found both in the literature (Blackburn, 1994; Gunn & Taylor, 1995; Weller & Weller, 1988) and the magistrates open written comments, that inadequate government funding

of the provision of appropriate services for the mentally disordered: i) in the community; ii) as a defendant; iii) as an offender; as mainly responsible.

Whilst such comments as

*“The so called 'Care in the Community' approach lacks credibility.
It should be more aptly described as a policy of Benign Neglect!!!”*
(A Magistrate)

and, descriptive and statistical data (Browne,1990; Dell et al,1991; NACRO[3]1994; Home Office circ.12/95) graphically underline the frustrations and difficulties which magistrates' nationwide are facing. There remain questions as to their cause. Based upon the results of this study [specifically the low level of knowledge demonstrated by the questionnaire and evidence outlined in the literature review], I propose that the cause for these difficulties and frustrations is not lack of facilities and government funding alone. I suggest that these are compounded by magistrates inadequate training, poor knowledge of other disciplines roles/responsibilities, inter-disciplinary communications and the magistrates' low level of knowledge [see results 3.4,3.4(i)]. This leads us to the conclusion that the presence, of just one if not all, of these may contribute significantly in the misuse of custodial remands as a disposal. Support for this may be found in Browne (1990), Rogers and Faulkner (1987) and Dell et al (1991). Each consider there is scope for diverting MDDs/MDOs from the criminal justice system and reducing the number of inappropriate custodial remands, within present resources and legal boundaries , providing that knowledge and understanding of the issues are reinforced with training, improved communication and sharing of information.

4.2 Magistrates attitudes relating to Mentally Disordered Defendants

Whereas much of the literature focuses upon diversion schemes and the principle of diversion of MDOs away from the criminal justice system, none has addressed the issue of magistrates' and their understanding and attitudes of mental disorder and its bearing upon the criminal act. Neither, has consideration been given as to how this may affect a magistrates disposal and

handling of MDDs who appear before them.

'Actus non facit reum nisi mens sit rea'

An act does not make a person guilty unless the mind be guilty.

This Latin maxim is a basic common law principle (Blackburn,1994) and reflects the complexities faced by the lay judiciary when dealing with a defendant who is accused of a crime and is mentally disordered. These complexities I feel are reflected in the results, of both the statistical and qualitative data. They demonstrate the balance of both the internal [personal] and external [law and information] considerations faced by magistrates when deciding upon a suitable 'disposal'. This is demonstrated by showing magistrates to have a less positive attitude (average 55.2%) towards mental disorder, whilst inclined to a more positive attitude (average 86.6%) when considering disposal of MDDs/MDOs (see Table 3 page 46). These complexities seem to be further compounded by the gender of the justices themselves and their length of service. This is demonstrated by both groups being shown to have a more positive attitude towards the history of mental disorder. the study shows magistrates with professional experience feel MDDs are unsuitable for probation hostels and score a negative attitude (PAMDOS).

Since both discrimination and assessment require judgement and all judgements inevitably involve criteria (Vaughan & Badger, 1995) it is appropriate to question what criteria magistrates' are using and whether the criteria being used, are truly relevant to the judgement being made. One such criteria examined by the questionnaire was the estimation by magistrates' of the importance of mental disorder in criminal behaviour (see results 3.0, Table 3; page 46). The study shows that the majority of magistrates' have a less positive attitude to mental disorder (PAMDOS, see Table 3 page 59) but have a more positive attitude to disposal of MDDs and do not relate to the importance of mental disorder to criminal behaviour. However 10-20% magistrates are undecided.

These results are consistent with the findings of Cordess (1995), which show that psychiatric disorder is rarely associated with 94% of offences which are non violent. However, this response is at variance with the less positive attitude [PAMDOS, Table 3] shown by the majority of magistrates associating the mentally disordered as being more likely than others to commit **particular** types of offences. A possible interpretation of this variance is that magistrates consider the mentally disordered to be more likely to commit the more serious offences. However this is not answered by the questionnaire. The results reflect the general public's growing public unease that the mentally disordered are more dangerous than 'normal' individuals. Such public impressions have been nurtured by a succession of violent incidents involving seriously mentally disturbed individuals, for example Christopher Clunis, a schizophrenic who murdered Jonathan Zito (Times, 18/8/94), used by the media to fuel the debate against the failure of the 'care in the community' policy.

Dell et al (1991) and other studies (see Lit review) however do not support the magistrates' views and indicate that only a small number of offences committed by MDOs were classified as serious with most being summary cases and relatively minor which therefore would remain within the magistrates' court jurisdiction. Links between schizophrenia, vagrancy and criminal damage have been recognised but the link with violence is less conclusive (Monahan, 1992). However, the findings do reveal that the range of public perceptions of an association between violence and mental disorder are reflected within the magistracy, whilst a majority (55.98%) of magistrates do not agree that mentally disordered people are more likely to be violent, 40% either agreed or were undecided.

Since it is suggested by Atkinson & Atkinson (1990) that :

*“Our ‘theories’ can actually shape our perceptions of the data,
distant our estimates of what goes with what and bias our
evaluations of cause and effect”* (Atkinson and Atkinson” (1990)

the need for magistrates to be better informed, and have a greater understanding of the complex interaction between offending behaviour and mental disorder, is paramount to achieve

a significant reduction in the number of mentally disordered who find themselves remanded in custody.

Other possible criteria which are less obvious and are cognitively used by magistrates' are their own personal perceptions or schemata, which were revealed in the 'open comments'. It is widely recognised that schemata help us process information (Atkinson et al,1990) but this process has a downside in that it creates a bias in our perceptions of new data. The significance of the need to be aware of this is considerable for magistrates in their general decision making in the courts, but even more importantly when dealing with a MDDs. It is important that a magistrates' judgements and practices do not reinforce or amplify the prejudices, discrimination and inequalities which can be found in society (Vaughan & Badger,1995). This is echoed in the Judicial Oath each magistrate swears when first appointed

*‘I swear.....and I will do right to all manner of people after
the laws and usages of this realm without fear or favour,
affection or ill will’*
(Magistrates'Handbook)

As stated in the introduction (1.iv page 3) the composition of each magistrates court bench is aimed to be a 'cross-representation ' of their local community. By implication therefore, it is reasonable to expect that magistrates as a cohort should hold the full range of social views, prejudices and discriminations found in our society, as described by Pilgrim and Rogers (1993). This expectation is confirmed by the study and is emphasised by the contents of the open comments, for example :

*“As more mental disordered people live in the community their
appearance in court will inevitably increase.”* (A Magistrate)

Such findings confirm the need for the development of training for all magistrates, with the hope that this would improve their understanding of mental disorder and in turn empower them towards better 'disposal' of MDD/MDOs. The study reveals, both the results and the open comments, two well defined views co-existing. Firstly, there are those magistrates who believe

that there is an association between mental illness, criminal and violent behaviour, whilst the second group excuse their behaviour on the basis of mental illness. The identification of these two approaches are consistent with the those expressed by Campbell and Heganbotham (1991), when identifying discrimination and prejudice among the general population towards mental disorder.

This is also confirmed by the studies findings which reveal a less positive attitude by magistrates towards mental disorder (see Table 3, page 46). However, a more positive attitude in relation to MDD and disposals, identified in the PAMDOS attitude scale and qualified by the 'open comments', reveal significant numbers of magistrates endeavouring to uphold the principles of their oath, with regard to assessment and disposal of MDDs (See results 2.1, 3.0). This is demonstrated by the majority of Magistrates (98.92%), believing that the fact a person suffers from a mental disorder may be relevant and should be considered as a mitigating factor, and that MDDs have the same rights to be considered for bail as anyone else.

It is clear from the results that this positive attitude is severely tested, when magistrates are faced with balancing the considerations between the interest of society and the liberty of the individual. The study shows that this dilemma is magnified for magistrates, when MDDs are placed on remand, either because it is not possible to make appropriate bail conditions, or due to inadequate provision, for example, - bail hostels, hospital accommodation, community facilities [see results 3.4(i)], and on some occasions because of cognitive fears and misunderstandings of mental disorder (see results 3.6). However it should be kept in mind that whilst magistrates' are a diverse cohort, with diverse understandings and opinions, on the whole, they appear to use information on the MDD to make decisions on the side of natural justice. This, I consider, is demonstrated particularly by their responses to attitudes on the assessment and disposal of MDDs.

The study suggests a relationship between gender and the difference of responses for certain questions. Female magistrates were inclined to a more positive attitude and give greater weight

to the issue of mental disorder. This was demonstrated by female magistrates expressing greater strength of agreement to consider the history/or presence of mental disorder relevant, when considering matters such as mitigation, choice of disposal and custodial remands. The importance of these finding lies in the fact, that whilst a number of studies have shown a difference in :

- a) Disposals for female and male defendants charged with the same offence.
- b) With more females being considered mentally disordered than males. There has been little research which has looked at what difference the gender of the judge/magistrate may bring to bear upon the choice of disposal either in general or in relation to the MDDs.

The benevolence of the responding female magistrates towards MDDs, identified from the questionnaire, contrasts significantly with Chesney-Lind (1980) who describe the judiciary as possessing male protective attitudes. This protective attitude could be considered to be demonstrated by this study, with male magistrates showing stronger inclinations to more punitive disposals and less willing to consider the influence of mental disorder upon the crime. A protective attitude however is not necessarily compatible with a positive attitude towards mental disorder, and could be interpreted as a negative approach if it is used as a justification for placing MDDs in custody. The study does show that male magistrates are more likely to be less sympathetic and tend towards punitive disposals, utilitarian or paternalistic attitude, for example: custody; while female magistrates are shown to be more inclined to consider disposals in relation to the individual and long term - rehabilitation or health solutions, and are more benevolent and maternalistic.

Significant gender differences also arise, when looking at magistrates' personal constructs of mental disorder (see Tables 5 & 6, page 48 and 50). The results suggest different criteria are used for assessing mental health by male and female magistrates. These findings are supported by earlier literature (see lit review Barnes and Maple,1992; Heidensohn,1996). The question arises as to whether or not the gender differences in attitude of magistrates can be accounted for by the gender schema theory, which as stated earlier, is beyond the scope of this dissertation.

The American psychologist Elliot Aronson argues in his book *The Social Animal* that:

“people who do crazy things are not necessarily crazy” (Elliot Aronson ,1980)

This is appropriate when considering the responses to question 5. The behaviours listed are applicable to people with and without mental disorder. They are not necessarily significant individually but may be, if considered in combination or in the context in which they occur (Hollins,1989; Monahan,1992). Therefore one must be very careful what interpretation we put on such behaviours. A number of magistrates did qualify their responses to include 'in combination' and 'in context'.

Despite this, the magistrates' personal constructs of mental disorder are expressed in often pejorative and moralistic terms which suggest that the mentally disordered are different from “normal” people, irrational, unpredictable, out of control and dangerous (see results 3.6(i)). 'Normal' and 'abnormal' were constant adjectives used to describe mental disorder, but as Blackburn (1994) suggests, there is rarely complete consensus about evaluations, expectations or normative elements within a social unit and normative judgements are typically applied conditionally according to setting, age, sex and status of participant. Therefore the concept of norm does not denote a single kind of belief or standard (Gibbs,1972) and gives rise to debate and controversy which is characterised in the magistrates responses. This is demonstrated by the professional experience and gender differences which emerged from the study. With more female magistrates including use of illegal drugs as **suggestive** of mental disorder and

personality disorder, psychosis and depression as **indicative** of mental disorder; whilst those magistrates with professional experience were more likely to consider talking to self and staring into space being an indication of mental disorder (see Tables 7 & 8 , pages 51 and 55).

The Magistrates 'open comments' are distinctly influenced by the medical model of mental disorder. They imply a benevolent willingness (PAMDOS - positive attitude) to accept the assumption that MDDs/MDOs do need to be given special considerations and treated differently. However, conflict seems to arise when the magistrate is faced with limited facilities and the need of the individual (see results 3.4,3.4(i)). These views are supported by the Browne,1990; Dell et al,1993; Prins,1994a who all describe and identify the misuse by the courts, i.e. magistrates, of custodial remands and sentences for MDD/MDOs and the difficulties of accessing appropriate services and agencies to the courts.

The impression given by the results suggest that the responding magistrates started out with a perception of the issue of mental disorder, MDDs/MDOs and court procedures but they showed a tendency to modify their views as they progressed through the questionnaire. I have taken my

evidence for this claim from the open comments, for example:

“From reading these questions I am aware that there are many areas in the court system regarding MDOs in which more comprehensive training is needed , to give magistrates a better understanding of these defendants, their needs, and the risks associated with them and to others”

“It is apparent that in completion of this questionnaire my knowledge regarding the treatment of MDOs is limited. It should be rectified”.

There were many generous comments by the responding magistrates; but more importantly they expressed a desire and willingness to undertake appropriate training, in relation to the

issues which surround the mentally disordered who appear in the magistrates' court. Many indicating that the questionnaire had raised their awareness of issues [See results 3.6(iii)] that surround the MDDs/MDOs and that it had caused them to look at their personal attitudes and perceptions of mental disorder.

At this point it is reasonable to consider some of the **limitations** of the study. One of which is the relatively low response rate. The possible conclusions which might be drawn from the 464 magistrates who declined to participate :

- i) disinterest in the topic
- ii) lack of knowledge and understanding of the issues surrounding the MDD
- iii) negative attitude towards mental disorder
- iv) length or contents of the questionnaire

The level of response may be considered a further reflection and confirmation of the low priority, which has been accorded to the introduction and development of training in relation to the MDD. It may equally be interpreted as an indication of the negative personal attitudes held by some magistrates'. A possible limitation on the study of using a postal questionnaire, which should be considered, lies in the fact that inevitably it is those who are intrinsically interested who respond - therefore self-selected, relying upon the individual motivation of each magistrate, their level of interest and concern for the issue. Self report data is also reliant upon the honesty of the individual respondent in replying to the questions. However, the length of the questionnaire, and the time needed to complete it, I feel may have acted as a possible limiting factor upon the research and may have deterred a number of magistrates from responding. Nevertheless, I consider the 28.7% response rate to be sufficient to be considered a representative sample of magistrates, particularly since the responses were spread across three local courts and a national sample from across the country.

Overall, the results of this study confirms the need to improve the level of knowledge of magistrates with regard to the issues surrounding MDD/MDOs and the desire of responding magistrates for appropriate training. The study also identifies that within the cohort of magistrates there exists less positive attitudes towards mental disorder but these appear more positive when considering issues of disposal.

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CONCLUSION

This dissertation identifies by reviewing the Government literature, that there now exist clear policies and guidelines relating to the mentally disordered defendant/offender. It also identifies very patchy attempts to apply these across the country and with varying degrees of success. The literature review failed to identify studies which looked at magistrates knowledge and attitudes in relation to mental disordered defendant/offenders.

The research, using a questionnaire sent to a wide sample of local and national magistrates, has shown that there is in general, poor knowledge and understanding of the main issues associated with MDD/MDOs. The study has also demonstrated that these deficiencies adversely affect magistrates process of 'disposal' [decision making] in respect of MDD/MDOs. The study shows magistrates to be a diverse cohort with regard to their association of mental disorder and criminal behaviour. The study also reveals a positive attitude to mental disorder when considering disposal but a less positive attitude towards mental disorder itself. The results also suggest that there exist differences in the way female and male magistrates view and use the information of a defendants mental disorder and that this has an effect upon 'disposal'.

I would finally conclude that in order to adhere to Government policy, as stated in Home Office circulars 66/90 (1990) and 12/95 (1995), it is necessary to take steps to improve the knowledge and understanding of issues related to, and attitudes towards, the MDD/MDOs for all magistrates. The predicted consequences are the reduction in the number of inappropriate custodial remands of MDD/MDOs and access to agencies which will provide help, care and/or treatment.

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Mentally Disordered Offender Questionnaire

Please base your answers on your own knowledge and understanding. All information will be treated in the strictest confidence.

Please tick the box or underline your chosen answer to each question.

Gender: Male ☐ Female ☐

Age: 20-29 ☐ 30-39 ☐ 40-49 ☐ 50-59 ☐ 60-69 ☐ 70+ ☐

1. *How many years have you been a magistrate?*

Less than 5 ☐ 5-9 ☐ 10-14 ☐ 15-19 ☐

20-24 ☐ 25+ ☐

2. *Do you have professional experience of dealing with people who are mentally disordered*

Yes ☐ No ☐

3. *What percentage of all criminal offences do you think are committed by people who are mentally disordered?*

0-25% ☐ 26-50% ☐ 51-75% ☐ 76-100% ☐

4. *What do you understand by the term 'mental disorder'?*

5. *Consider the list below and tick any that you think may be a significant indication of mental disorder:*

Talking to self ☐ Staring into space ☐ Uncontrolled movements ☐

Alcohol abuse ☐ Wanting to die ☐ Verbally threatening ☐

Use of illegal drugs ☐ Physical aggression ☐

Comment:

6. Which of the following do you consider to constitute or suggest mental disorder?

Schizophrenia	<input type="checkbox"/>	Personality disorder	<input type="checkbox"/>	Psychosis	<input type="checkbox"/>
Alcohol abuse	<input type="checkbox"/>	Drug abuse	<input type="checkbox"/>	Low IQ	<input type="checkbox"/>
Sexual deviation	<input type="checkbox"/>	Depression	<input type="checkbox"/>	Self-harm	<input type="checkbox"/>

Comment:

Please consider the following statements and indicate your level of agreement with each.

7. 'Most repetitive summary offences are committed by people who are mentally disordered'

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

8. 'Certain summary offences are only associated with people who are mentally disordered'

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

9. 'Where a defendant has been diagnosed as mentally disordered this should be considered as a mitigating factor by the magistrates'

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

10. A defendant's mental health should be ignored when considering:

(i) Bail

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

(ii) Sentence

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

Comment:

11. *'Mentally disordered offenders should be treated differently from other people who have committed similar offences'*

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

12. *'A mentally disordered person should not be remanded to prison custody simply to receive psychiatric assessment or treatment'*

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

13. *'Information about a mentally disordered offender's past and current mental state is needed if the courts are to make the best decisions in respect of remands and sentence following conviction'.*

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

14. *'The interests of society should take priority over the liberty of the individual'*

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

Comment:

15. *'Mentally disordered offenders have the same right to be granted bail as anyone else'*

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

16. *'Mentally disordered people are more likely than others to commit criminal offences'*

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

17. *'Mentally disordered people are more likely than others to commit particular types of criminal offences'*

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

18. ***'Mentally disordered people are less likely than others to be bailed by the police'***

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

19. ***'Mentally disordered people are likely to be violent'***

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

20. ***'Mentally disordered offenders are unsuitable for probation hostels'***

Agree strongly	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Undecided	<input type="checkbox"/>
Disagree	<input type="checkbox"/>	Strongly disagree	<input type="checkbox"/>		

Please tick the box or underline your chosen answer to each question.

21. ***Do you consider that a defendant who is mentally disordered is more at risk of self harm or danger to others than a defendant who is not mentally disordered?***

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

22. ***Have you ever had occasion to use a custodial remand or sentence for a mentally disordered offender because:***

No alternative exists locally	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
-------------------------------	-----	--------------------------	----	--------------------------

Alternatives are not available because they are full/oversubscribed

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

Excessive delays in reports being prepared and made available

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

23. ***Approximately how often per year:***

(i) do you estimate that mentally disordered defendants appear before you?

Never	<input type="checkbox"/>	1-3	<input type="checkbox"/>	4-6	<input type="checkbox"/>	7-9	<input type="checkbox"/>	10+	<input type="checkbox"/>
-------	--------------------------	-----	--------------------------	-----	--------------------------	-----	--------------------------	-----	--------------------------

(ii) are psychiatric reports requested within your court?

Never	<input type="checkbox"/>	1-3	<input type="checkbox"/>	4-6	<input type="checkbox"/>	7-9	<input type="checkbox"/>	10+	<input type="checkbox"/>
-------	--------------------------	-----	--------------------------	-----	--------------------------	-----	--------------------------	-----	--------------------------

24. ***Do you find psychiatric reports :***

(i) Useful	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Sometimes	<input type="checkbox"/>
(ii) Difficult to interpret	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Sometimes	<input type="checkbox"/>
(iii) Leave you wanting further clarification/information	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Sometimes	<input type="checkbox"/>

25. *Have you ever experience difficulties in setting suitable bail conditions for a defendant diagnosed as mentally disordered?*

Yes ☐ No ☐

26. *Can you remand a mentally disordered offender to hospital for summary offences only?*

Yes ☐ No ☐

27. *How long can a remand to a hospital under the Mental Health Act 1983 last?*

2 days ☐ 6 days ☐ 8 days ☐ 14 days ☐

28 days ☐ one calender month ☐ 12 weeks ☐

28. *Can a condition of bail be a remand to a psychiatric hospital if the defendant agrees to go to a hospital voluntarily?*

Yes ☐ No ☐

29. *Do you know what the role of an Approved Social Worker is in relation to mentally disordered offenders?*

Yes ☐ No ☐

If Yes, please describe:

30. *Can you make psychiatric treatment part of a community sentence?*

Yes ☐ No ☐

If Yes, how?

31. *Are you aware of the protocol and departmental policies in respect of mentally disordered offenders. Please tick each that you know.*

Police	<input type="checkbox"/>
CPS	<input type="checkbox"/>
Prison service	<input type="checkbox"/>
Probation service	<input type="checkbox"/>
Social services	<input type="checkbox"/>
Health service	<input type="checkbox"/>
Home Office	<input type="checkbox"/>

32. *Do you consider that Magistrates courts seek expert advice in relation to mentally disordered offenders:*
- | | | | | | |
|------|--------------|-----|--------------------------|----|--------------------------|
| (i) | Early enough | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| (ii) | Often enough | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
33. *Can you remand a defendant assessed as mentally disordered to a hospital as part of bail conditions?*
- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|
34. *Do bail hostels accept mentally disordered offenders?*
- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|
35. *Can a defendant submit him or herself for a psychiatric report as an outpatient while on bail?*
- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|
36. *Have you ever sought information / advice from the court bail information officer?*
- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|
37. *Have you ever made a:*
- | | | | | | |
|-------|--|-----|--------------------------|----|--------------------------|
| (i) | Supervision and treatment order | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| (ii) | Guardianship order | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| (iii) | Probation order with conditions of psychiatric treatment | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |

Please use this space to make any further comments or points arising from the questions asked or matters that you consider to be relevant and important in relation to mentally disordered offenders.

Completed questionnaires should be returned to your court by the 31st of September 1995.

Many thanks for your time and effort in completing this questionnaire.

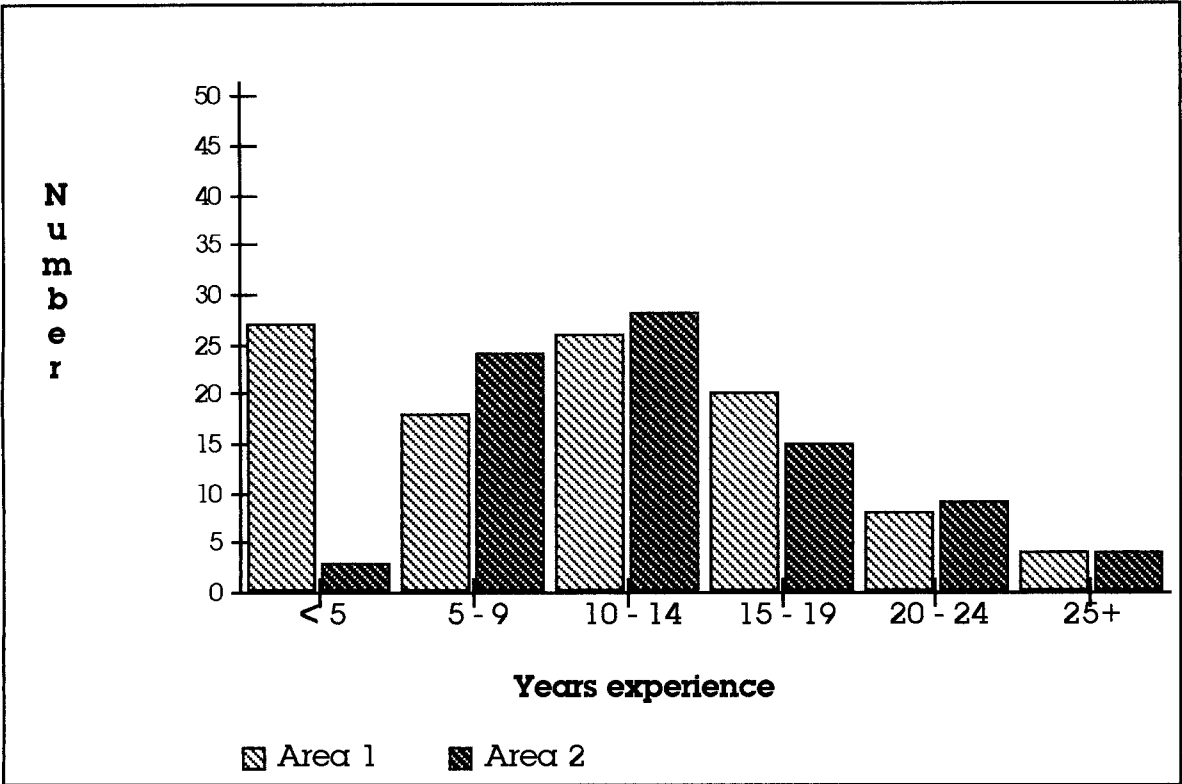
Mentally Disordered Offender Questionnaire

Explanatory Note

The provision within the criminal justice system, the health and social services for mentally disordered offenders is currently under review.

In direct response to the Mental Health Commission's recent report and recommendations, Home Office Circulars 66/90 and 12/95, research has been initiated. The aim is to identify and review the status within the criminal justice system, the health and social services of mentally disordered suspects/offenders and to effect appropriate change within each agency where necessary. Each agency is being asked to look at their particular role. Circular 12/95 emphasises the need for all agencies to improve and increase inter-agency co-operation, communication and understanding. Clearly, the courts - and the role of magistrates in particular - are a key part of this process.

Graph 1 Appendix 3



Graph 2 Appendix 4

